

Memorandum 2017-28

**Fish and Game Law
(Draft Tentative Recommendation, Part 2)**

In this study, the Commission¹ is developing a proposed recodification of the Fish and Game Code. At its June 2016 meeting, the Commission directed the staff to prepare a draft tentative recommendation including proposed recodification of all existing provisions the Commission had reviewed to date.² That material included provisions tentatively organized in the proposed law as follows:

- Division 1. General Provisions
- Division 2. Administration
- Division 3. Law Enforcement
- Division 4. Inter-Jurisdictional Compacts
- Division 5. Native American Tribes [Reserved]
- Division 6. Hunting, Trapping, and Fishing Generally
- Division 7. Birds
- Division 8. Mammals
- Division 9. Fish
- Division 10. Invertebrates
- Division 11. Amphibians
- Division 12. Reptiles

At the Commission's April 2017 meeting, the staff presented "Part 1" of that draft tentative recommendation, which was approved by the Commission for circulation to the general public.³ "Part 1" of the tentative recommendation includes the material contained in Divisions 1 through 4 above.⁴

This memorandum presents "Part 2" of that draft tentative recommendation. "Part 2" is comprised of material that would be located in the divisions labeled 6

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Minutes (June 2016), p. 6.

3. Minutes (April 2017), p. 6.

4. See draft attached to Memorandum 2017-15.

through 12 above, along with provisions that would be located in two additional divisions.

The first of those new divisions, containing provisions regulating treatment of wild animals distinct from their take, would be a new Division 7, entitled “Wildlife Propagation, Domestication, Possession, and Sale.”⁵ The Commission has not yet reviewed some of these provisions, as they were not included in previously presented preliminary drafts.

“Part 2” also includes a new Division 14, which contains provisions relating to the consumption of plants. Those provisions were presented to the Commission in a preliminary draft at the April 2017 meeting.⁶

The attached draft is obviously quite lengthy, and the staff very much regrets presenting the Commission with this amount of material this late in a meeting cycle. Unfortunately, an unforeseeable major staff scheduling conflict precluded any earlier presentation.

The staff has presented this material at this time only because (1) the draft includes almost exclusively technical drafting, (2) except as noted below, the Commission has once reviewed the bulk of the material in previously presented preliminary drafts, and (3) the draft presents no policy decisions requiring analysis by the Commission. Moreover, based on anticipated significant public comment on the material from knowledgeable stakeholders, the Commission will have another opportunity to review the material when considering that comment, as well as one final time in conjunction with approval of a final proposed recodification of the entire code.

However, if the Commission wishes more time to review the attached draft before approving it for circulation, the staff will re-calendar this matter for the August meeting.

Issues relating to the content of the attached draft are discussed below. Unless otherwise indicated, all statutory references in this memorandum are to the Fish and Game Code, or to the “proposed” provisions of the attached draft.

NEW PROVISIONS

The attached draft includes some new provisions that were not included in preliminary staff drafts the Commission has reviewed earlier in the study.

5. Based on the addition of this division, “Division 7. Birds” would be renumbered as Division 8, and all following divisions would be renumbered accordingly.

6. See Memorandum 2017-16; Minutes (Apr. 2017), p. 6.

New Division 7 (“Wildlife Propagation, Domestication, Possession, and Sale”)

As indicated, the draft includes a new Division 7, generally regulating animal treatment of a nature distinct from hunting, trapping or fishing (the subject matter of Division 6).⁷ The first part of Division 7 contains provisions relating to aquaculture,⁸ which were simply moved from a previous location among general fishing provisions.⁹

However, the division also includes new statutory parts, containing provisions relating to fish hatcheries,¹⁰ fish planting,¹¹ domestication of game animals,¹² propagation of fur-bearing mammals,¹³ importation, transportation, and possession of specifically identified wild animals,¹⁴ importation and transportation of live plants and animals,¹⁵ aquatic invasive species,¹⁶ importation and transportation of dead animals,¹⁷ and sale or possession for sale of identified animals.¹⁸

Prior Commission Decision

Additional provisions have also been added to implement a prior Commission decision regarding “signposting” provisions.¹⁹ This directive provided that, where applicable, provisions should be included preceding statutory sections relating to specific animals, directing readers to other parts of the code that may also govern those animals.²⁰

Provisions Added After Review of Later Parts of Code

Finally, several provisions have been added to the draft that the staff determined, based on their subject matter, were most appropriately located

7. Part 7 of this proposed division, relating to importation and transportation of live animals, includes provisions that also govern related plants.

8. See Part 1 (commencing with Section 23300) of Division 7.

9. See preliminary draft attached to Memorandum 2016-7.

10. See Part 2 (commencing with Section 25100) of Division 7.

11. See Part 3 (commencing with Section 25400) of Division 7.

12. See Part 4 (commencing with Section 26000) of Division 7.

13. See Part 5 (commencing with Section 26400) of Division 7.

14. See Part 6 (commencing with Section 26500) of Division 7.

15. See Part 7 (commencing with Section 28800) of Division 7.

16. See Part 8 (commencing with Section 28250) of Division 7.

17. See Part 9 (commencing with Section 28400) of Division 7.

18. See Part 10 (commencing with Section 28600) of Division 7.

19. See, e.g., proposed Sections 31400, 32900, 32905.

20. See Memorandum 2016-25, p. 5; Minutes (June 2016), p. 6.

among provisions that had already been presented to the Commission in a prior preliminary draft.²¹

REVISED OR RELOCATED PROVISIONS

The attached draft also includes some provisions included in previously presented preliminary drafts that have been either revised or relocated.

Legislative Changes

Some previously presented provisions have been revised to reflect amendments to the continued existing code sections that occurred after the continued provision had been presented in a preliminary draft. In these instances, in light of the freshness of the amendment, the new statutory language was generally incorporated verbatim in the attached draft.

Prior Commission Decisions

Some previously presented provisions have been relocated to implement Commission decisions. For example, the Commission has previously directed that provisions governing a single identified animal should be grouped together, to the extent that could be done without interfering with understanding of a cohesive statutory scheme.²²

Other significant changes made to implement Commission decisions are referenced in the footnote below.²³

Nonsubstantive Clarification

Based on subsequent review of material included in preliminary drafts, the staff was also able to identify and include some minor clarification of previously

21. See proposed Sections 8145, 8305, 8400, 8450(g), 8710-20, 9150-9360, 9900-10, 10105-40, 10830, 11020(c), 11110(b), 11500, 11525, 11540, 11900-12640, 12805, 13110, 13800-13915, 14210, 14310, 14660, 14665, 14950, 15100-15305, 16895, 18250, 19205, 19230, 19500-19810, 19505, 19510, 19515, 19605, 19610, 20100-05, 20240, 20700, 20720-45, 21940-50, 22515, 22600-40, 23150-23200, 28750, 28915, 29050-65, 29205, 29375, 30100-05, 30115, 30205, 30360-95, 30565, 31935, 32700, 32965(a), 34055(d), 34060-65, 34120-25, 34245(a), 34450, 34535, 34870(a), 35825(a), 35615, 37050, 38200, 38355, 38565, 39755, 40050, 40100-20, 40705, 41650, 43150, 44105(b), 44200(d), 45700(d), 45860-65, 49500(h), 51470, 52200-53105.

22. See Minutes (Apr. 2015), p. 5.

23. See Minutes (Apr. 2014), p. 6 (approving staff proposal to clarify use of the terms “administrative penalty,” administrative civil penalty,” and “civil penalty” throughout the code); Minutes (Dec. 2015), p. 6 (approving revision of proposed Section 16850.13 to clarify statutory language); Minutes (Sept. 2016), p. 7-9 (approving clarifying use of term “game” as a modifier).

presented statutory language, making the draft more readable without creating any apparent substantive change.

Where such a revision involved replacement of substantial text, the Comment following the section has been revised to indicate that the proposed section “restates” the existing provision (rather than “continues” the existing section). In addition, a Commission Note following the Comment recites the pertinent language of the existing provision, and asks for comment on whether the proposed textual change would have some unforeseen substantive impact.

De minimis textual revisions, such as the insertion of subdivision calls, singularization, or modernization of archaic and disfavored verbiage, is reflected by a Comment indicating that the proposed section continues an existing provision “without substantive change.”

COMMISSION NOTES

The attached draft also includes some new Commission Notes following some proposed sections, generally seeking public comment on how to best draft the section based on potential ambiguity or inconsistency.

CONCLUSION

When the Commission feels it is ready, it will need to decide whether to approve the attached draft for circulation as a tentative recommendation, with or without changes.

Respectfully submitted,

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Staff Counsel

CALIFORNIA LAW REVISION COMMISSION

<h2>STAFF DRAFT</h2>

TENTATIVE RECOMMENDATION

Fish and Wildlife Code Part 2
(Divisions 6-14)

June 2017

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **September 20, 2017**.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

In 2010, the Secretary of the Resources Agency was directed to convene a committee to develop and submit a “strategic vision” for the Fish and Game Commission and the Department of Fish and Game (now the Department of Fish and Wildlife.) The resulting report recommended that the Law Revision Commission be tasked with cleaning up the Fish and Game Code.

In response to that report, Senator Fran Pavley and Assembly Member Jared Huffman (the Chairs of the Senate Natural Resources and Water Committee and the Assembly Water, Parks, and Wildlife Committee at that time) requested that the Commission conduct a comprehensive review and clean-up of the Fish and Game Code, noting “the need for a comprehensive, thorough review and updating of the Fish and Game Code, to identify obsolete, inconsistent or duplicative sections, and to provide support for more readily understood and enforceable fish and wildlife regulations.” Authority to conduct that study was granted by concurrent resolution in 2012.

In order to achieve the greatest degree of improvement to the organization and expression of the Fish and Game Code, the Commission decided to prepare a recommendation that would repeal the existing code and replace it with a new Fish and Wildlife Code. The new code would continue the substance of the former code in a more user-friendly form, without making any significant substantive change to the effect of existing law.

This tentative recommendation presents the second part of the proposed Fish and Wildlife Code. It was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

FISH AND WILDLIFE CODE

1 In 2010, the Secretary of the Resources Agency was directed to convene a
2 committee to develop and submit a “strategic vision” for the Fish and Game
3 Commission and the Department of Fish and Game (now the Department of Fish
4 and Wildlife.)¹ The resulting report recommended, among other things, that the
5 Law Revision Commission be tasked with cleaning up the Fish and Game Code.²

6 In response to that recommendation, Senator Fran Pavley and Assembly
7 Member Jared Huffman (the Chairs of the Senate Natural Resources and Water
8 Committee and the Assembly Water, Parks, and Wildlife Committee at that time)
9 requested that the Commission conduct a comprehensive review and clean-up of
10 the Fish and Game Code, noting “the need for a comprehensive, thorough review
11 and updating of the Fish and Game Code, to identify obsolete, inconsistent or
12 duplicative sections, and to provide support for more readily understood and
13 enforceable fish and wildlife regulations.”³ In 2012, the Legislature directed the
14 Commission to conduct the requested study:

15 [The] Legislature approves for study by the California Law Revision
16 Commission the new topic listed below:

17 Whether the Fish and Game Code and related statutory law should be revised to
18 improve its organization, clarify its meaning, resolve inconsistencies, eliminate
19 unnecessary or obsolete provisions, standardize terminology, clarify program
20 authority and funding sources, and make other minor improvements, without
21 making any significant substantive change to the effect of the law[.]⁴

22 In order to achieve the greatest degree of improvement to the organization and
23 expression of the Fish and Game Code, the Commission decided to prepare a
24 recommendation that would repeal the existing code and replace it with a new Fish
25 and Wildlife Code. The new code would continue the substance of the former code
26 in a more user-friendly form, without making any significant substantive change to
27 the effect of existing law.

28 This tentative recommendation presents “Part 2” of the proposed Fish and
29 Wildlife Code.⁵ It includes Divisions 6 through 14 of the proposed code:

30 Division 6. Hunting, Trapping, and Fishing Generally

31 Division 7. Wildlife Propagation, Domestication, Possession, and Sale

32 Division 8. Birds

1. 2010 Cal. Stat. ch. 424.

2. See *California Fish & Wildlife Strategic Vision, Recommendations for Enhancing the State’s Fish and Wildlife Management Agencies*, A13 (April 2012).

3. See Memorandum 2012-5, pp. 22-23.

4. 2012 Cal. Stat. res. ch. 108 (ACR 98 (Wagner)).

5. “Part 1” of the proposed Fish and Wildlife Code was approved by the Commission and circulated for public comment in April, 2017.

1 Division 9. Mammals
2 Division 10. Fish
3 Division 11. Invertebrates
4 Division 12. Amphibians
5 Division 13. Reptiles
6 Division 14. Plants

7 The general character and noteworthy features of the tentative recommendation
8 are discussed below.

9 STUDY OBJECTIVES

10 **Improve Accessibility of the Law**

11 The primary purpose of this study is to simplify and improve the organization
12 and expression of the Fish and Game Code, to make it more understandable and
13 useable, without making any significant substantive changes to the effect of that
14 law.

15 The Fish and Game Code needs to be understandable to non-experts. Many
16 laypeople take advantage of the wildlife resources of the state, for recreational or
17 commercial purposes. Those persons need to be able to understand the code in
18 order to comply with the law and avoid criminal liability. Ambiguity and
19 confusion do not promote the public policy goals that the Fish and Game Code
20 was designed to accomplish.

21 In addition, improvement of the clarity and organization of the Fish and Game
22 Code would facilitate the future development of the law, by making it easier for
23 the Legislature to assess the state of existing law and thereby avoid redundancy or
24 inconsistency in enacting new provisions.

25 **Nonsubstantive Reform**

26 The proposed law would improve the organizational clarity of the Fish and
27 Game Code, as intended. However, there is an important limit on the extent to
28 which the Commission can make that law clearer, simpler, or better organized. In
29 authorizing this study, the Legislature specifically prohibited any “significant
30 substantive change to the effect of the law.”⁶

31 That limitation has been the controlling principle in the preparation of the
32 proposed law. The Commission has exercised care to ensure that the proposed law
33 would not result in any significant substantive change in outcome under the
34 affected statutes.

35 Specific measures taken by the Commission to avoid making any significant
36 substantive change in the law are described below.

6. *Id.*

1 **Objective and Participatory Study Process**

2 The Commission’s study process is well-suited to the development of a
3 nonsubstantive reform of the Fish and Game Code, for the following reasons:

- 4 • The Commission is neutral and objective, with no special interest in the
5 subject of fish and game. The Commission has no motivation to introduce
6 significant substantive changes into fish and game law.
- 7 • The Commission has prior experience in drafting legislation to recodify
8 complex bodies of law without making any significant substantive change.⁷
- 9 • The Commission’s work is transparent. All materials are publicly
10 distributed. All deliberations are conducted at open public meetings.
- 11 • The Commission actively solicits input from affected interest groups.
12 Interim drafts of the proposed law are provided to those groups for review.
13 Any objection that a change would have a substantive effect is carefully
14 analyzed and addressed by the Commission.
- 15 • In proposing legislative reform, the Commission prepares a thorough
16 explanatory report that explains the purpose and effect of the proposed law,
17 and sets out a complete draft of the proposed legislation, with a detailed
18 table of contents and a table showing the disposition of every affected
19 section. This report facilitates public review of the proposed law.

20 **Commission Comments**

21 In preparing a recommendation, the Commission drafts an explanatory
22 “Comment” for every section that is added, amended, or repealed.⁸ A Comment
23 indicates the derivation of a section and often explains its purpose, its relation to
24 other law, and potential issues concerning its meaning or application.

25 For the most part, the Comments in this tentative recommendation state
26 expressly, for each affected section, that the proposed law is not intended to make
27 any change to the substance of the affected provision. In the rare instance that a
28 minor substantive improvement is proposed, it is specifically identified as such.

29 On completion of a final recommendation, the full recommendation, including
30 the proposed legislation and the Comments, will be presented to the Legislature
31 and the Governor. If legislation is introduced to effectuate the proposed law, the
32 full recommendation will be provided to each member of every policy committee
33 that reviews the legislation.

34 Commission materials that have been placed before and considered by the
35 Legislature are considered evidence of legislative intent,⁹ and are entitled to great

7. For example, in 2009 the Commission recommended the nonsubstantive recodification of the deadly weapon statutes, an important and sensitive body of law. See *Nonsubstantive Reorganization of Deadly Weapon Statutes*, 38 Cal. L. Revision Comm’n Reports 217 (2009); enacted as 2010 Cal. Stat. ch. 178, 2010 Cal. Stat. ch. 711.

8. The Comments follow each section of the proposed legislation *infra*.

9. See, e.g., *Fair v. Bakhtiari*, 40 Cal. 4th 189, 195, 147 P.3d 653, 657, 51 Cal. Rptr. 3d 871, 875 (2006) (“The Commission’s official comments are deemed to express the Legislature’s intent.”); *People v.*

weight in construing statutes.¹⁰ The materials are a key interpretive aid for practitioners as well as courts,¹¹ and courts may judicially notice and rely on them.¹² Courts at all levels of the state¹³ and federal¹⁴ judicial systems use Commission materials to construe statutes enacted on Commission recommendation.¹⁵

Williams, 16 Cal. 3d 663, 667-68, 547 P.2d 1000, 128 Cal. Rptr. 888 (1976) (“ The official comments of the California Law Revision Commission on the various sections of the Evidence Code are declarative of the intent not only of the draft[ers] of the code but also of the legislators who subsequently enacted it.”).

10. See, e.g., *Dep’t of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.*, 40 Cal. 4th 1, 12-13 n.9, 145 P.3d 462, 469 n.9, 50 Cal. Rptr. 3d 585, 593 n.9 (2006) (Commission’s official comments are persuasive evidence of Legislature’s intent); *Hale v. S. Cal. IPA Med. Group, Inc.*, 86 Cal. App. 4th 919, 927, 103 Cal. Rptr. 2d 773, 778 (2001):

In an effort to discern legislative intent, an appellate court is entitled to take judicial notice of the various legislative materials, including committee reports, underlying the enactment of a statute. (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 400, fn. 8, 276 Cal.Rptr. 524; *Coopers & Lybrand v. Superior Court* (1989) 212 Cal.App.3d 524, 535, fn. 7, 260 Cal. Rptr. 713.) In particular, reports and interpretive opinions of the Law Revision Commission are entitled to great weight. (*Schmidt v. Southern Cal. Rapid Transit Dist.* (1993) 14 Cal.App.4th 23, 30, fn. 10, 17 Cal.Rptr.2d 340.)

11. *Cf.* 7 B. Witkin, Summary of California Law *Constitutional Law* § 123, at 230 (10th ed. 2005) (Commission reports as aid to construction); Gaylord, *An Approach to Statutory Construction*, 5 Sw. U. L. Rev. 349, 384 (1973).

12. See, e.g., *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.*, 133 Cal. App. 4th 26, 34 Cal. Rptr. 3d 520 (2005) (providing overview of materials that may be judicially noticed in determining legislative intent); *Hale*, 86 Cal. App. 4th at 927; *Barkley v. City of Blue Lake*, 18 Cal. App. 4th 1745, 1751 n.3, 23 Cal. Rptr. 2d 315, 318-19 n.3 (1993).

13. See, e.g., *Sullivan v. Delta Air Lines, Inc.*, 15 Cal. 4th 288, 298, 935 P.2d 781, 63 Cal. Rptr. 2d 74 (1997) (California Supreme Court); *Admin. Mgmt. Services, Inc. v. Fid. & Deposit Co. of Md.*, 129 Cal. App. 3d 484, 488, 181 Cal. Rptr. 141 (1982) (court of appeal); *Rossetto v. Barross*, 90 Cal. App. 4th Supp. 1, 5-6, 110 Cal. Rptr. 2d 255 (2001) (appellate division of superior court).

14. See, e.g., *California v. Green*, 399 U.S. 149, 154 n.3 (1970) (United States Supreme Court); *S. Cal. Bank v. Zimmerman* (*In re Hilde*), 120 F.3d 950, 953 (9th Cir. 1997) (federal court of appeals); *Williams v. Townsend*, 283 F. Supp. 580, 582 (C.D. Cal. 1968) (federal district court); *Ford Consumer Fin. Co. v. McDonell* (*In re McDonell*), 204 B.R. 976, 978-79 (B.A.P. 9th Cir. 1996) (bankruptcy appellate panel); *In re Garrido*, 43 B.R. 289, 292-93 (Bankr. S.D. Cal. 1984) (bankruptcy court).

15. See, e.g., *Jevne v. Superior Court*, 35 Cal. 4th 935, 947, 111 P.3d 954, 962, 28 Cal. Rptr. 3d 685, 694-95 (2005) (Commission report entitled to substantial weight in construing statute); *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 308 & n.6, 6 P.3d 713, 718 & n.6, 99 Cal. Rptr. 2d 792, 797 & n.6 (2000) (Comments to reenacted statute reiterate the clear understanding and intent of original enactment); *Brian W. v. Superior Court*, 20 Cal. 3d 618, 623, 574 P.2d 788, 791, 143 Cal. Rptr. 717, 720 (1978) (Comments persuasive evidence of Legislature’s intent); *Volkswagen Pac., Inc. v. City of Los Angeles*, 7 Cal. 3d 48, 61-63, 496 P.2d 1237, 1247-48, 101 Cal. Rptr. 869, 879-80 (1972) (Comments evidence clear legislative intent of law); *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968) (Comments entitled to substantial weight), *overruled on other grounds*, *Privette v. Superior Court*, 5 Cal. 4th 689, 696, 854 P.2d 721, 21 Cal. Rptr. 2d 72 (1993); *County of Los Angeles v. Superior Court*, 62 Cal. 2d 839, 843-44, 402 P.2d 868, 870-71, 44 Cal. Rptr. 796, 798-99 (1965) (statutes reflect policy recommended by Commission).

1 The Commission's Comments will make clear that, with a small number of
2 specifically identified exceptions, the proposed law should be construed as an
3 entirely nonsubstantive reorganization of the law.

4 *Statements of Legislative Intent*

5 The proposed law would be known as the Fish and Wildlife Code of 2019.¹⁶ It
6 would include a number of codified general provisions to expressly state the
7 purpose and effect of the recodification.

8 Proposed Section 10 would make clear that a provision of the proposed law is
9 intended as a restatement and continuation of the provision that it restates, and that
10 any reference to a restated provision is deemed to include a reference to the
11 section that restates it (and vice versa):

12 10. (a) A provision of this code, insofar as it is substantially the same as a
13 previously existing provision relating to the same subject matter, shall be
14 construed as a restatement and continuation thereof, and not as a new enactment.

15 (b) A reference in a statute or regulation to a previously existing provision that
16 is restated and continued in this code shall, unless a contrary intent appears, be
17 deemed a reference to the restatement and continuation.

18 (c) A reference in a statute or regulation to a provision of this code that is
19 substantially the same as a previously existing provision, shall, unless a contrary
20 intent appears, be deemed to include a reference to the previously existing
21 provision.

22 In addition, proposed Sections 15 and 20 would make clear that restatement of a
23 provision is not intended to have any effect, positive or negative, on a judicial
24 interpretation of the restated provision or a judicial holding regarding the
25 provision's constitutionality:

26 15. (a) A judicial decision interpreting a provision of the former Fish and Game
27 Code is relevant in interpreting any provision of this code that restates or
28 continues that provision of the former Fish and Game Code.

29 (b) However, in enacting the Fish and Wildlife Code of 2019, the Legislature
30 has not evaluated the correctness of any judicial decision interpreting a provision
31 of the former Fish and Game Code.

32 (c) The enactment of the Fish and Wildlife Code of 2019 is not intended to, and
33 does not, reflect any assessment of any judicial decision interpreting any
34 provision of the former Fish and Game Code.

35 20. (a) A judicial decision determining the constitutionality of a provision of the
36 former Fish and Game Code is relevant in determining the constitutionality of any
37 provision of this code that restates or continues that provision of the former Fish
38 and Game Code.

39 (b) However, in enacting the Fish and Wildlife Code of 2019, the Legislature
40 has not evaluated the constitutionality of any provision enacted by that act, or the

16. See proposed Section 1(b) *infra*. The title will require adjustment if the proposed legislation is enacted in a different year.

1 correctness of any judicial decision determining the constitutionality of any
2 provision of the former Fish and Game Code.

3 (c) The enactment of the Fish and Wildlife Code of 2019 is not intended to, and
4 does not, reflect any determination of the constitutionality of any provision
5 enacted by that act.

6 Those provisions are particularly important with respect to provisions that were
7 added by initiative or to effectuate an initiative. The Commission's
8 recommendation to continue those provisions without any significant change
9 should not be construed as acquiescence in any court case construing the
10 continued provisions or an indication that the Commission has assessed the
11 constitutionality of the provisions.

12 ***Legislative Process***

13 After the Commission completes its study process and issues a final
14 recommendation, the proposed law would be scrutinized carefully in the
15 legislative process. This would serve as a final safeguard against any unintended
16 substantive change in the law.

17 **DRAFTING APPROACH**

18 **Structure of Proposed Law**

19 As noted above, this tentative recommendation presents the second part of a
20 proposed Fish and Wildlife Code. Specifically, it includes the following divisions:

- 21 Division 6. Hunting, Trapping, and Fishing Generally
- 22 Division 7. Wildlife Propagation, Domestication, Possession, and Sale
- 23 Division 8. Birds
- 24 Division 9. Mammals
- 25 Division 10. Fish
- 26 Division 11. Invertebrates
- 27 Division 12. Amphibians
- 28 Division 13. Reptiles
- 29 Division 14. Plants

30 The Commission anticipates that the remainder of the proposed code will be
31 presented in tentative recommendations addressing wildlife and habitat
32 protections, and California Tribes.

33 The proposed Fish and Wildlife Code would be organized into five levels:
34 divisions, parts, titles, chapters, and articles. This provides as much latitude as
35 possible to group similar provisions together, and then combine similar groupings
36 into a logical hierarchical structure.

1 This approach complies with the Legislature's directive to improve the
2 organization of the Fish and Game Code.¹⁷ It allows for a more coherent and
3 intuitive organizational structure, which should make it easier for a reader to find
4 relevant provisions within the statute.

5 **Short, Simple Sections**

6 One common problem in statutory drafting is code sections that are excessively
7 long. Excessively long sections can obscure relevant details of law, especially if a
8 single section addresses several different subjects.

9 A better approach is to divide the law into a larger number of smaller sections,
10 with each section limited to a single subject. Short sections have numerous
11 advantages. They enhance readability and understanding of the law, and make it
12 easier to locate and refer to pertinent material. In contrast to a long section, a short
13 section can be amended without undue technical difficulties and new material can
14 be inserted where logically appropriate, facilitating sound development of the law.
15 The use of short sections is the preferred drafting technique of the California Code
16 Commission,¹⁸ the Legislature,¹⁹ the Legislative Counsel,²⁰ and the Law Revision
17 Commission.²¹

18 For those reasons, the proposed law would divide lengthy sections into shorter
19 and simpler provisions.

Definition of Terms

20 Under existing law, some definitions are scattered throughout the Fish and
21 Game Code. Some terms are used with different definitions in different contexts,
22 or are defined for some uses but not others. This can create uncertainty as to
23 whether any given term is subject to a statutory definition. That may lead to
24 misunderstanding of the law. It may also lead to unintended consequences, if the
25 Legislature uses a defined term without realizing that it would be subject to an
26 already existing definition.

27 The proposed law would group most of the definitions in a separate part near the
28 beginning of the proposed law, in alphabetical order. This approach would make it
29 easier for members of the public, attorneys, judges, and the Legislature to quickly
30 determine whether a term is subject to a statutory definition. It will also make it
31 easier for the Legislature to identify and review cases where a single term has

17. 2016 Cal. Stat. res. ch. 150.

18. California Code Commission, *Drafting Rules and Principles for Use of California Code Commission Draftsmen*, 1947-48 Report, app. G, at 4.

19. Senate & Assembly Joint Rule 8 (May 14, 2009).

20. Legislative Counsel of California, *Legislative Drafting Manual* 26-28 (1975).

21. Commission Staff Memorandum 76-24 (Feb. 17, 1976); First Supplement to Commission Staff Memorandum 85-64 (May 31, 1985).

multiple definitions that are similar but not identical, or is defined for some purposes but not for others. That would facilitate future simplification of the law.

In some cases, placement of a definition with the other definitions near the front of the code would arguably expand the scope of the definition. In those cases, the Comment indicates that the provision has been “generalized” and a note following the provision specifically asks whether generalization of the definition would cause any problematic substantive change in the meaning of any provision of existing law. The Commission specifically solicits public input on that issue.

There is one definition that is likely to be confusing in some situations. The existing definition of “fish,” which applies to the entire Fish and Game Code, includes animals that are not considered fish biologically (i.e., invertebrates and amphibians).²² It is not clear whether every use of that term is intended to have the defined meaning. Notwithstanding that potential source of confusion, the Commission is not recommending any change to the application of the definition.²³ Making such a change would require a determination of legislative intentions in hundreds of sections, which is not practicable in this study.

Cross-References

The Fish and Game Code contains numerous cross-references. The reorganization of existing law will require that the existing references be updated to reflect the numbering of the new code.

This tentative recommendation updates cross-references to provisions in this document, and in the Commission’s recently circulated Tentative Recommendation on *Fish and Wildlife Code Part 1 (Divisions 1-4)* (April 2017). Cross-references to the remainder of the code have not been updated in this tentative recommendation. Those references are set out in boldface type for easy recognition. They will be updated later in the study process.

To facilitate review of the cross-reference updates made in this tentative recommendation, the Commission has provided a table at the end of the proposed legislation showing the disposition of each provision of existing law. For convenience, the table includes all of the provisions continued in both parts of the tentative recommendation circulated to date.

MINOR SUBSTANTIVE IMPROVEMENTS

While the Legislature directed the Commission to avoid making any *significant* substantive changes to the effect of the law, this leaves open the possibility of making improvements that would have a de minimis substantive effect. The

22. See Fish & Game Code § 45.

23. See proposed Section 380 *infra*.

Commission has done so sparingly. All such proposed changes are noted below, to simplify review.

Preliminary Provisions

In a few instances, the Commission is proposing to add preliminary provisions to clarify the general effect of the Fish and Wildlife Code. Those provisions would have a salutary effect on the clarity of the code, without significantly affecting the substantive effect of the law.²⁴

Definitions

As discussed above, several definitions would be relocated to a part near the beginning of the code.²⁵ As a consequence of that placement, the definitions would apply to the entire code (except where the law or context provides otherwise).²⁶

“Game” Animals

The word “game” has occasionally been used in the existing code in an ambiguous manner, when intended as a modifier before a list of two or more categories of animals (e.g., “game bird, mammal, fish, reptile, or amphibian”).²⁷ In this tentative recommendation, the Commission has noted those instances, and in some cases proposed to clarify the usage.²⁸

The Commission has also proposed to define the terms “game amphibian,”²⁹ “game fish,”³⁰ and “game reptile.”³¹ Those terms would be used in a small number of sections.³²

References to Licensees

A number of provisions of the existing code refer to persons who hold particular licenses. For example, the term “commercial fisherman” is defined to mean a person who holds a commercial fishing license.³³ The Commission would revise those provisions to instead refer to a person who is required to hold a specified license (regardless of whether the person actually does hold that license). For

24. See proposed Sections 5, 15, 20, 25 *infra*.

25. See proposed Sections 235, 240, 255, 265, 290, 330, 340, 350, 365, 410, 470, 490, 525, 530, 540, 560, 600, 605, 610, 615, 625, 630, 670, 675, 685, 690, 730, 745, 750, 765, 770, 780, 785 *infra*.

26. See proposed Section 200 *infra*.

27. See existing Sections 307, 2001, 2003, 3002, 3080, and 3086.

28. See proposed Sections 8015, 8115, 8705, 9550, 10800, 10825 *infra*.

29. See proposed Section 445 *infra*.

30. See proposed Section 455 *infra*.

31. See proposed Section 465 *infra*.

32. See proposed Sections 8115, 8125, 8705, 38560 *infra*.

33. See existing Fish and Game Code Section 8031(a)(4).

1 further explanation of these changes, see generally the Note following proposed
2 Section 280 (“commercial fisherman”).

3 Many commercial fishing activities require obtaining and maintaining an
4 appropriate license to engage in that activity.³⁴ Persons engaging in those licensed
5 activities are further regulated by a number of provisions of the existing code.

6 The Commission believes those provisions were intended by the Legislature to
7 apply to any person who *engages* in the regulated activity, regardless of whether
8 that person holds a valid license to do so. However, that general principle is
9 undermined by regulatory provisions in the existing code that on their face apply
10 to a “licensed commercial fisherman,” or use other similar language.³⁵

11 Read literally, such usage would make some provisions that regulate
12 commercial fishing activity inapplicable to persons who engage in the regulated
13 activity *without* a valid license. To avoid that result, the proposed law would add
14 definitions referring to a person engaging in a licensed commercial fishing activity
15 as a person who is required by law to have a license to engage in that activity.³⁶
16 The proposed law would then generally use those defined terms throughout to
17 refer to the person regulated by an applicable provision.

18 **Broadened Application of Provisions**

19 Proposed Sections 13500 and 30535 would slightly broaden existing provisions,
20 to better effectuate the likely intent of the broadened provisions. See the Notes
21 following those sections.

22 **REQUEST FOR PUBLIC COMMENT**

23 The Commission seeks public comment on its tentative recommendation.
24 Comments supporting the proposed approach are just as important as comments
25 suggesting changes to that approach or expressing other views.

34. See existing Fish and Game Code Sections 7850 (commercial fishing), 7920 (commercial passenger fishing boat owner), 8033 (fish receiver), 8033.1 (marine aquaria receiver), 8033.5 (fish retailer), 8034 (fish processor), 8035 (fish wholesaler), 8036 (fish importer), 8460 (live freshwater bait fish dealer), 8597 (marine aquaria collector).

35. See, e.g., existing Fish and Game Code Sections 2348 (declaring section expressly applicable to “licensed commercial fishermen” and “licensed commercial fish dealers”), 8031(a)(4) (defining “commercial fisherman” for purposes of provisions relating to fish business licenses as “a person who has a valid, unrevoked commercial fishing license issued pursuant to Section 7850”), 8043.2 (landing tax receipt requirements applicable to “a commercial fisherman licensed pursuant to Section 8033.5”); 8050 (requiring the keeping of accounting records by “every person licensed under Article 7 (commencing with Section 8030)”); 8667 (prohibiting the take or possession of specified fish in a specified location “by a licensed commercial fisherman”).

36. See proposed Sections 280 (commercial fisherman), 300 (commercial passenger fishing boat owner), 385 (fish importer), 390 (fish processor), 395 (fish receiver), 400 (fish retailer), 405 (fish wholesaler), 500 (live freshwater bait fish dealer), 510 (marine aquaria collector), 515 (marine aquaria receiver) *infra*.

FISH AND WILDLIFE CODE

Note: The document that follows contains a proposed recodification of provisions of the existing Fish and Game Code reasonably described by the indicated topical headings. One or more proposed recodifications, containing all remaining provisions of the existing code, will be distributed at a later time.

Statutory cross-references in this proposed recodification that cannot yet be revised (because the cross-referenced provisions have not yet been recodified) are set out in boldface type, for later attention.

A draft of an official Commission “Comment” follows each proposed code section in the proposed recodification. Such Comments will be included in any final recommendation. The Comments indicate the source of each recodified code section (or provision within the code section) and describe how the recodified code section or provision compares with prior law. Courts have routinely held that the Commission’s Comments are evidence of legislative intent with regard to any legislation that implements a Commission recommendation. For guidance on the terminology used in Commission Comments, see the Comment following proposed Section 20.

There is a “disposition table” at the end of the proposed recodification. It summarizes, in tabular form, the disposition of every provision of the existing code that has been included in this proposed recodification. If an existing provision would be repealed as unnecessary, the table identifies that provision as “omitted.”

Some code sections in the proposed recodification are followed by a Commission “Note.” Commission Notes are intended to be temporary, and will not be part of the Commission’s final recommendation. **The Notes are intended to flag issues requesting special attention and comment from stakeholders and the general public.**

However, the Commission welcomes public comment on *any* issue relating to the content of the recodification. In addition to comment on the matters raised in Commission Notes, the Commission is particularly interested in comments addressing any of the following matters:

- (1) Any inconsistency, obsolescence, ambiguity, or problems relating to program authority and funding, whether revealed *within* a provision of this proposed recodification, or *between* a provision of this recodification and any other provision of law.
- (2) Provisions that should have been included in this proposed recodification but were not, or provisions included in this recodification that should be located in a proposed recodification of the existing code to follow.
- (3) Technical drafting errors.

Comments should be directed to Brian Hebert at bhebert@clrc.ca.gov.

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DIVISION 1. GENERAL PROVISIONS

PART 1. PRELIMINARY PROVISIONS

§ 1. Code title

1. (a) This code shall be known as the Fish and Wildlife Code.

(b) The act that added this code shall be known and may be cited as the “Fish and Wildlife Code of 2019.”

Comment. Subdivision (a) of Section 1 is comparable to former Fish and Game Code Section 1.

Subdivision (b) is new. It provides a convenient means of referring to the recodification of the former Fish and Game Code.

§ 5. Application of part

5. Unless the provision or context otherwise requires, the provisions of this part govern the construction of this code.

Comment. Section 5 is new. It is a common general provision in the codes. See, e.g., Prob. Code § 6.

§ 10. Restatement and continuation

10. (a) A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be construed as a restatement and continuation thereof, and not as a new enactment.

(b) A reference in a statute or regulation to a previously existing provision that is restated and continued in this code shall, unless a contrary intent appears, be deemed a reference to the restatement and continuation.

(c) A reference in a statute or regulation to a provision of this code that is substantially the same as a previously existing provision, shall, unless a contrary intent appears, be deemed to include a reference to the previously existing provision.

Comment. Subdivision (a) of Section 10 continues the first sentence of former Fish and Game Code Section 3 without substantive change.

Subdivision (b) is drawn from Government Code Section 9604.

Subdivision (c) is drawn from Family Code Section 2.

A number of terms and phrases are used in the Comments to the sections of the Fish and Wildlife Code to indicate the sources of the sections, and to describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the Comments.

(1) *Continues without change.* A new provision “continues” a former provision “without change” if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some Comments may describe the relationship by simply stating that the Fish and Wildlife Code provision “continues” or is “the same as” a former provision, or is “the same as” a provision of a uniform act.

(2) *Continues without substantive change.* A new provision “continues” a former provision “without substantive change” if the substantive law remains the same but the language differs to an insignificant degree.

(3) *Restates without substantive change.* A new provision “restates” a former provision “without substantive change” if the substantive law remains the same but the language differs to a significant degree. Some Comments may describe the new provision as being the “same in substance.”

(4) *Exceptions, additions, omissions.* If part of a former provision is “continued” or “restated,” the Comment may say that the former provision is continued or restated but also note the specific differences as “exceptions to,” “additions to,” or “omissions from” the former provision.

(5) *Generalizes, broadens, restates in general terms.* A new provision may be described as “generalizing,” “broadening,” or “restating in general terms” a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(6) *Supersedes, replaces.* A provision “supersedes” or “replaces” a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(7) *New.* A provision is described as “new” when it has no direct source in prior statutes.

(8) *Drawn from, similar to, consistent with.* A variety of terms are used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be “drawn from” a uniform act, model code, or the statutes of another state. In these cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(9) *Codifies.* A Comment may state that a new provision “codifies” a case-law rule that has not previously been enacted into statutory law.

(10) *Makes clear, clarifies.* A new provision may be described as “making clear” a particular rule or “clarifying” a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

(11) *Statement in Comment that section is “comparable” to another section.* A Comment may state that a provision is “comparable” to another provision. If the Comment to a section notes that another section is “comparable,” that does not mean that the other section is the same or substantially the same. The statement is included in the Comment so that the statute user is alerted to the other section and can review the cases under that section for possible use in interpreting the section containing the statement in the Comment.

§ 15. Judicial decisions

15. (a) A judicial decision interpreting a provision of the former Fish and Game Code is relevant in interpreting any provision of this code that restates or continues that provision of the former Fish and Game Code.

(b) However, in enacting the Fish and Wildlife Code of 2019, the Legislature has not evaluated the correctness of any judicial decision interpreting a provision of the former Fish and Game Code.

(c) The enactment of the Fish and Wildlife Code of 2019 is not intended to, and does not, reflect any assessment of any judicial decision interpreting any provision of the former Fish and Game Code.

Comment. Section 15 is new. Subdivision (a) makes clear that case law construing a predecessor provision of the former Fish and Game Code is relevant in construing its successor provision or provisions in the Fish and Wildlife Code.

Subdivisions (b) and (c) make clear that in enacting the Fish and Wildlife Code of 2019, the Legislature has not taken any position on any judicial opinion interpreting any provision of the former Fish and Game Code.

1 **§ 20. Constitutionality of provisions**

2 20. (a) A judicial decision determining the constitutionality of a provision of the
3 former Fish and Game Code is relevant in determining the constitutionality of any
4 provision of this code that restates or continues that provision of the former Fish
5 and Game Code.

6 (b) However, in enacting the Fish and Wildlife Code of 2019, the Legislature
7 has not evaluated the constitutionality of any provision enacted by that act, or the
8 correctness of any judicial decision determining the constitutionality of any
9 provision of the former Fish and Game Code.

10 (c) The enactment of the Fish and Wildlife Code of 2019 is not intended to, and
11 does not, reflect any determination of the constitutionality of any provision
12 enacted by that act.

13 **Comment.** Section 20 is new. Subdivision (a) makes clear that case law determining the
14 constitutionality of a predecessor provision of the former Fish and Game Code is relevant in
15 determining the constitutionality of its successor provision or provisions in the Fish and Wildlife
16 Code of 2019.

17 Subdivisions (b) and (c) make clear that in enacting the Fish and Wildlife Code of 2019, the
18 Legislature has not taken any position on the constitutionality of any provision of that act, or of
19 any provision of the former Fish and Game Code.

20 **§ 25. Transitional provision**

21 25. (a) As used in this section:

22 (1) “New law” means either of the following, as the case may be:

23 (A) The act that enacted this code.

24 (B) The act that makes a change in this code, whether effectuated by
25 amendment, addition, or repeal of a provision of this code.

26 (2) “Old law” means the applicable law in effect before the operative date of the
27 new law.

28 (3) “Operative date” means the operative date of the new law.

29 (b) This section governs the application of the new law except to the extent
30 otherwise expressly provided in the new law.

31 (c) Subject to the limitations provided in this section, the new law applies on the
32 operative date to all matters governed by the new law, regardless of whether an
33 event occurred or circumstance existed before, on, or after the operative date,
34 including, but not limited to, commencement of a proceeding, making of an order,
35 or taking of an action.

36 (d) If a document or paper is filed before the operative date, the contents,
37 execution, and notice thereof are governed by the old law and not by the new law,
38 but subsequent proceedings taken after the operative date concerning the
39 document or paper, including an objection or response, a hearing, an order, or
40 other matter relating thereto is governed by the new law and not by the old law.

41 (e) If an order is made before the operative date, or an action on an order is
42 taken before the operative date, the validity of the order or action is governed by
43 the old law and not by the new law. Nothing in this subdivision precludes

1 proceedings after the operative date to modify an order made, or alter a course of
2 action commenced, before the operative date, to the extent proceedings for
3 modification of an order or alteration of a course of action of that type are
4 otherwise provided in the new law.

5 (f) No person is liable for an action taken before the operative date that was
6 proper at the time the action was taken, even though the action would be improper
7 if taken on or after the operative date, and the person has no duty, as a result of the
8 enactment of the new law, to take any step to alter the course of action or its
9 consequences.

10 (g) If the new law does not apply to a matter that occurred before the operative
11 date, the old law continues to govern the matter notwithstanding its repeal or
12 amendment by the new law.

13 (h) If a party shows, and the court determines, that application of a particular
14 provision of the new law or of the old law in the manner required by this section
15 or by the new law would substantially interfere with the effective conduct of the
16 proceedings or the rights of the parties or other interested persons in connection
17 with an event that occurred or circumstance that existed before the operative date,
18 the court may, notwithstanding this section or the new law, apply either the new
19 law or the old law to the extent reasonably necessary to mitigate the substantial
20 interference.

21 **Comment.** Section 25 replaces the second sentence of former Fish and Game Code Section 3.

22 Section 25 is similar to Family Code Section 4 and Probate Code Section 3. It provides general
23 transitional rules applicable to the Fish and Wildlife Code. This section applies both to the act
24 that enacted the Fish and Wildlife Code and to any later act that changes the code, whether the
25 change is effectuated by amendment, addition, or repeal of a provision of the code.

26 The rules stated in this section are general provisions that apply absent a special rule stated in a
27 new law. Special rules may defer or accelerate application of a new law despite the general rules
28 stated in this section. See subdivision (b).

29 The general rule prescribed in subdivision (c) is that a new law applies immediately on its
30 operative date to all matters, including pending proceedings. The general rule is qualified by the
31 exceptions listed in subdivision (d) (contents, execution, and notice of papers and documents are
32 governed by the law applicable when the paper or document is filed), subdivision (e) (orders are
33 governed by the law applicable when the order is made, subject to any applicable modification
34 procedures), and subdivision (f) (acts are governed by the law applicable when the act is done).

35 Where a new law fails to address a matter that occurred before its operative date, subdivision
36 (g) makes clear that old law continues to govern the matter.

37 Because it is impractical to attempt to deal with all the possible transitional problems that may
38 arise in the application of a new law to various circumstances, subdivision (h) provides a safety
39 valve that permits the court to vary the application of the new law where there would otherwise
40 be a substantial impairment of procedure or justice. This provision is intended to apply only in the
41 extreme and unusual case, and is not intended to excuse compliance with the basic transitional
42 provisions simply because of minor inconveniences or minor impacts on expectations or other
43 interests.

44 In addition to governing other substantive provisions, Section 25 also governs itself. It
45 therefore becomes operative on the date the Fish and Wildlife Code becomes operative and
46 applies to provisions enacted and operative before, on, or after that date.

1 **§ 30. Effect of headings**

2 30. Division, part, title, chapter, article, and section headings do not in any
3 manner affect the scope, meaning, or intent of the provisions of this code.

4 **Comment.** Section 30 continues former Fish and Game Code Section 4 without substantive
5 change.

6 **§ 35. Reference to specified part of code**

7 35. Unless otherwise expressly stated:

8 (a) “Division” means a division of this code.

9 (b) “Part” means a part of the division in which that term occurs.

10 (c) “Title” means a title of the part in which that term occurs.

11 (d) “Chapter” means a chapter of the division, part, or title, as the case may be,
12 in which that term occurs.

13 (e) “Article” means an article of the chapter in which that term occurs.

14 (f) “Section” means a section of this code.

15 (g) “Subdivision” means a subdivision of the section in which that term occurs.

16 (h) “Paragraph” means a paragraph of the subdivision in which that term occurs.

17 (i) “Subparagraph” means a subparagraph of the paragraph in which that term
18 occurs.

19 **Comment.** Subdivisions (f) and (g) of Section 35 restate former Fish and Game Code Section
20 73 without substantive change. The other provisions of Section 35 are new. They are similar to
21 Probate Code Section 8, except that references to “title” have been added.

22 **§ 40. Reference to statute includes amendments and additions**

23 40. Whenever reference is made to any portion of this code or of any other law
24 of this state, the reference applies to all amendments and additions heretofore or
25 hereafter made.

26 **Comment.** Section 40 continues former Fish and Game Code Section 5 without substantive
27 change.

28 **§ 45. Delegation**

29 45. Whenever a power is granted to, or duty is imposed upon, a public officer,
30 the power may be exercised or the duty may be performed by a deputy of the
31 officer, or by a person authorized, pursuant to law, by the officer, unless this code
32 expressly provides otherwise.

33 **Comment.** Section 45 continues former Fish and Game Code Section 6 without change.

34 **§ 50. Use of English in statements and reports**

35 50. Whenever a statement or report is required to be made, it shall be made in
36 the English language. Nothing in this section shall prohibit the department from
37 providing an unofficial translation of a statement or report in a language other than
38 English.

39 **Comment.** The first sentence of Section 50 continues former Fish and Game Code Section 7
40 without change.

1 The second sentence is drawn from Code of Civil Procedure Section 185. It authorizes, but
2 does not require, unofficial translation of statements and reports into languages other than
3 English.

4 See also Gov't Code §§ 7290-7299.8 (Dymally-Alatorre Bilingual Services Act).

5 **§ 55. Tenses**

6 55. The present tense includes the past and future tenses, and the future, the
7 present.

8 **Comment.** Section 55 continues former Fish and Game Code Section 8 without change.

9 **§ 60. Gender**

10 60. The masculine gender includes the feminine and the neuter.

11 **Comment.** Section 60 continues former Fish and Game Code Section 9 without change.

12 **§ 65. Number**

13 65. The singular number includes the plural, and the plural, the singular.

14 **Comment.** Section 65 continues former Fish and Game Code Section 10 without change.

15 **§ 70. Days**

16 70. Whenever in this code the doing of an act between certain dates or from one
17 date to another is allowed or prohibited, the period of time thereby indicated
18 includes both dates specified. The first date specified designates the first day of the
19 period, and the second day specified designates the last day of the period. No
20 period of time specified in this code exceeds one year unless otherwise expressly
21 provided.

22 **Comment.** Section 70 continues former Fish and Game Code Section 11 without change.

23 **§ 75. Mailed notice**

24 75. Unless otherwise specified by statute, any notice or other written
25 communication required to be sent to any person by this code or regulations
26 adopted pursuant to this code is sufficient notice, if sent by first-class mail to the
27 last address furnished to the department by that person.

28 **Comment.** Section 75 continues former Fish and Game Code Section 13 without substantive
29 change.

30 **§ 80. "Shall" and "may"**

31 80. "Shall" is mandatory and "may" is permissive.

32 **Comment.** Section 80 continues former Fish and Game Code Section 79 without change.

33 **§ 85. Order, rule, and regulation**

34 85. "Order," "rule," and "regulation" are used interchangeably and each includes
35 the others.

36 **Comment.** Section 85 continues former Fish and Game Code Section 64 without change.

1 **§ 90. Possession of animal taken out of state**

2 90. A provision of this code relating to the possession of birds, mammals, fish,
3 reptiles, or amphibians applies to birds, mammals, fish, reptiles, or amphibians
4 taken either in or outside of this state.

5 **Comment.** Section 90 continues former Fish and Game Code Section 2013 without substantive
6 change.

7 **§ 95. Animal parts**

8 95. A provision of this code that applies to a whole animal also applies to a part
9 of the animal.

10 **Comment.** Section 95 continues former Fish and Game Code Section 80 without substantive
11 change.

12 **PART 2. DEFINITIONS**

13 **§ 200. Application of definitions**

14 200. Unless a provision or the context otherwise requires, the definitions in this
15 part govern the construction of this code and all regulations adopted pursuant to
16 this code.

17 **Comment.** Section 200 continues former Fish and Game Code Section 2 without substantive
18 change.

19 **§ 205. “Adaptive management”**

20 205. “Adaptive management,” unless otherwise specified in this code, means
21 management that improves the management of biological resources over time by
22 using new information gathered through monitoring, evaluation, and other credible
23 sources as they become available, and adjusts management strategies and practices
24 to assist in meeting conservation and management goals. Under adaptive
25 management, program actions are viewed as tools for learning to inform future
26 actions.

27 **Comment.** Section 205 continues former Fish and Game Code Section 13.5 without change.

28 **Note.** The existing Fish and Game Code contains a second definition of the term “adaptive
29 management” in existing Section 90.1, solely governing construction of “Chapter 7 (commencing
30 with Section 1700) of Division 2 and Division 6 (commencing with Section 5500) and all
31 regulations adopted pursuant to those provisions.” See existing Fish and Game Code Section 90.

32 However, the term “adaptive management” no longer appears to be used in any of those
33 referenced code sections, nor has the Commission been able to find the term used in any
34 regulation adopted pursuant to the referenced provisions.

35 **The Commission invites comment on whether it would be problematic to discontinue the**
36 **special definition of the term “adaptive management” in existing Section 90.1.**

37 **§ 210. “Affix”**

38 210. “Affix” means physically attach to, or imprint on, an electronic validation
39 to a license document.

1 **Comment.** Section 210 continues former Fish and Game Code Section 16 without substantive
2 change.

3 **§ 215. “Anadromous fish”**

4 215. “Anadromous fish” means fish that spawn in fresh water and spend a
5 portion of their lives in the ocean.

6 **Comment.** Section 215 continues former Fish and Game Code Section 14 without substantive
7 change.

8 **§ 220. “Angling”**

9 220. “Angling” means the taking of, or attempting to take, fish by hook and line
10 with the line held in the hand, or by hook and line with the line attached to a pole
11 or rod that is closely attended or held in the hand in a manner that the fish
12 voluntarily takes the bait or lure in its mouth.

13 **Comment.** Section 220 continues former Fish and Game Code Section 15 without substantive
14 change.

15 **§ 225. “Aquaculture”**

16 225. (a) “Aquaculture” means that form of agriculture devoted to the
17 propagation, cultivation, maintenance, and harvesting of aquatic plants and
18 animals in marine, brackish, and fresh water.

19 (b) “Aquaculture” does not include species of ornamental marine or freshwater
20 plants and animals not utilized for human consumption or bait purposes that are
21 maintained in closed systems for personal, pet industry, or hobby purposes,
22 however, these species continue to be regulated under Part 7 (commencing with
23 Section 26500) of Division 7.

24 **Comment.** Section 225 continues former Fish and Game Code Section 17 without substantive
25 change.

26 **§ 230. “Bag limit”**

27 230. “Bag limit” means the maximum limit, in number or amount, of birds,
28 mammals, fish, reptiles, or amphibians that may lawfully be taken by any one
29 person during a specified period of time.

30 **Comment.** Section 230 continues former Fish and Game Code Section 18 without change.

31 **§ 235. “Bait net”**

32 235. “Bait net” means a lampara net or round haul type net, the mesh of which is
33 constructed of twine not exceeding Standard No. 9 medium cotton seine twine, or
34 synthetic twine of equivalent size or strength.

35 **Comment.** Section 235 generalizes the first sentence of former Fish and Game Code Section
36 8780(a).

37 **Note.** Existing Fish and Game Code Section 8780(a) (which would be continued by proposed
38 Section 235) provides a definition of the term “bait net,” for purposes of the chapter in which that


section appears. However, the term is used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code § 10660.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 240. “Beach net”

240. “Beach net” means a net hauled from the water to the beach or shore, and includes a beach seine and a haul seine.

Comment. Section 240 generalizes former Fish and Game Code Section 8800.

 **Note.** Existing Fish and Game Code Section 8800 (which would be continued by proposed Section 240) provides a definition of the term “beach net,” for purposes of the chapter in which that section appears.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 245. “Bird”

245. “Bird” means a wild bird or part of a wild bird.

Comment. Section 245 continues former Fish and Game Code Section 22 without change.

The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

§ 250. “Body-gripping trap”


250. A body-gripping trap is one that grips the mammal’s body or body part, including, but not limited to, steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares. Cage and box traps, nets, suitcase-type live beaver traps, and common rat and mouse traps shall not be considered body-gripping traps.

Comment. Section 250 continues the second and third sentences of former Fish and Game Code Section 3003.1(a) without change.

§ 255. “Bucket trap”

255. “Bucket trap” means a plastic bucket of five gallons or less in capacity.

Comment. Section 255 generalizes former Fish and Game Code Section 9000.5(a).

 **Note.** Existing Fish and Game Code Section 9000.5(a) (which would be continued by proposed Section 255) provides a definition of the term “bucket trap,” for purposes of the article in which that section appears.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 260. “Buy”

260. “Buy” includes an offer to buy, purchase, barter, exchange, or trade.

Comment. Section 260 continues former Fish and Game Code Section 24 without change.

1 **§ 265. “Bycatch”**

2 265. “Bycatch” means fish or other marine life that are taken in a fishery but
3 which are not the target of the fishery. “Bycatch” includes discards.

4 **Comment.** Section 265 generalizes former Fish and Game Code Section 90.5.

5 **Note.** Existing Fish and Game Code Section 90.5 (which would be continued by proposed
6 Section 265) provides a definition of the term “bycatch” for purposes of existing Section 1700,
7 provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all
8 regulations adopted pursuant to those provisions. See existing Section 90.

9 **The Commission invites comment on whether it would be problematic to generalize the**
10 **definition so that it applies code-wide.**

11 **§ 270. “Chumming”**

12 270. “Chumming” means the placing in the water of fish, or other material upon
13 which fish feed, for the purpose of attracting fish to a particular area in order that
14 they may be taken.

15 **Comment.** Section 270 continues former Fish and Game Code Section 27 without change.

16 **§ 275. “Closed season”**

17 275. “Closed season” means that period of time during which the taking of
18 birds, mammals, fish, amphibians, or reptiles is prohibited.

19 **Comment.** Section 275 continues former Fish and Game Code Section 29 without change.

20 **§ 280. “Commercial fisherman”**

21 280. “Commercial fisherman” means a person engaging in an activity for which
22 a commercial fishing license is required pursuant to Section 14500.

23 **Comment.** Section 280 is drawn from former Fish and Game Code Sections 8040(a) and 7850.
24 It is added for drafting convenience.

25 **Note.** In general, the Commission believes that the laws governing commercial fishing should
26 apply to anyone who is engaged in the regulated activity, regardless of whether that person holds
27 a valid license. That general principle is undermined by the Fish and Game Code’s occasional use
28 of the term “licensed commercial fisherman” in provisions that regulate commercial fishing. Such
29 provisions impliedly only apply to a person who holds a valid commercial fishing license. See,
30 e.g., Sections 8031(a)(4) (““Commercial fisherman” means a person who has a valid, unrevoked
31 commercial fishing license issued pursuant to Section 7850.”).

32 Read literally, such provisions would make some provisions that regulate commercial fishing
33 inapplicable to persons fishing commercially without a valid license. To avoid that result,
34 proposed Section 280 defines the term “commercial fisherman” to mean a person who is required
35 by law to have a commercial fishing license (i.e., a person who is engaging in regulated
36 commercial fishing activity). That defined term is then used throughout this portion of the
37 proposed Fish and Wildlife Code, replacing references to a “licensed commercial fisherman.” The
38 Commission will make an exception to that practice if it finds that a provision that regulates
39 commercial fishing is clearly intended to make holding a license a necessary substantive element
40 of a rule. In those cases, the term “licensed commercial fisherman” would be used.

41 **The Commission invites comment on whether the addition of this definition to the**
42 **proposed law, or the substitution of the defined term for references to a “licensed**
43 **commercial fisherman” in provisions of the proposed law, would be problematic.**

1 **§ 285. “Commercial fishing entitlement”**

2 285. “Commercial fishing entitlement” means a commercial fishing license, or
3 any other permit, stamp, or entitlement issued by the department, to take, possess
4 aboard a boat, or land fish for a commercial purpose, but not including the
5 following entitlements:

6 (a) A license issued pursuant to Title 9 (commencing with Section 20200) of
7 Part 6 of Division 6.

8 (b) A license issued pursuant to Title 13 (commencing with Section 22100) of
9 Part 6 of Division 6.

10 (c) A commercial boat registration or other entitlement authorizing the use of a
11 vessel.

12 **Comment.** Section 285 is new. It is added for drafting convenience.

13 **Note.** Existing Fish and Game Code Sections 7852.1, 7852.2, 7852.25, and 7857 refer in
14 slightly different ways to the various entitlements related to commercial fishing to which those
15 provisions apply. Proposed Section 285 would conform and standardize those application
16 provisions, excluding entitlements that generally apply to distinguishable subject matter.

17 **The Commission invites comment on the inclusion and wording of proposed Section 285.**

18 **§ 290. “Commercial fishing license”**

19 290. “Commercial fishing license” means a valid, unrevoked commercial fishing
20 license issued pursuant to Chapter 1 (commencing with Section 14500) of Title 2
21 of Part 6 of Division 6.

22 **Comment.** Section 290 generalizes former Fish and Game Code Section 8031(a)(4). It is
23 added for drafting convenience.

24 **Note.** Existing Fish and Game Code Section 8031(a)(4) (which would be continued by
25 proposed Section 290) defines the term “commercial fishing license,” for purposes of the articles
26 in which those sections appear. However, the term is used without a corresponding definition in
27 many other provisions of the existing code.

28 **The Commission invites comment on whether it would be problematic to generalize the**
29 **definition so that it applies code-wide.**

30 **§ 295. “Commercial passenger fishing boat”**

31 295. For purposes of this title, “commercial passenger fishing boat” means a
32 boat or vessel from which its owner, for profit, permits a passenger to take fish.

33 **Comment.** Section 295 is drawn from the first paragraph of former Fish and Game Code
34 Section 7920. It is added for drafting convenience.

35 **Note.** Proposed Section 295 is drawn from the first paragraph of existing Fish and Game
36 Code Section 7920.


37 **The Commission invites comment on whether it would be problematic to include in the**
38 **proposed law and generalize a definition of the term “commercial passenger fishing boat”**
39 **as set forth in proposed Section 295 that would apply code-wide.**

40 **§ 300. “Commercial passenger fishing boat owner”**

41 300. “Commercial passenger fishing boat owner” means a person engaging in an
42 activity for which a commercial passenger fishing boat license is required pursuant

1 to Sections 21900 and 21905.

2 **Comment.** Section 300 is drawn from the first paragraph of former Fish and Game Code
3 Section 7920. It is added for drafting convenience.

4  **Note.** Proposed Section 300 is drawn from the first paragraph of existing Fish and Game
5 Code Section 7920.

6 **The Commission invites comment on whether it would be problematic to include in the**
7 **proposed law and generalize a definition of the term “commercial passenger fishing boat**
8 **owner” as set forth in proposed Section 300 that would apply code-wide.**

9 **§ 305. “Commission”**

10 305. “Commission” means the Fish and Game Commission.

11 **Comment.** Section 305 continues the first clause of former Fish and Game Code Section 30
12 without change.

13 **§ 310. “Commissioner”**

14 310. “Commissioner” means a member of the Fish and Game Commission.

15 **Comment.** Section 310 continues the second clause of former Fish and Game Code Section 30
16 without change.

17 **§ 315. “County”**

18 315. “County” includes city and county.

19 **Comment.** Section 315 continues former Fish and Game Code Section 32 without change.

20 **§ 320. “Credible science”**

21 320. “Credible science” means the best available scientific information that is
22 not overly prescriptive due to the dynamic nature of science, and includes the
23 evaluation principles of relevance, inclusiveness, objectivity, transparency,
24 timeliness, verification, validation, and peer review of information as appropriate.
25 Credible science also recognizes the need for adaptive management, as scientific
26 knowledge evolves.

27 **Comment.** Section 320 continues former Fish and Game Code Section 33 without substantive
28 change.

29 **§ 325. “Day”**

30 325. “Day” means calendar day.

31 **Comment.** Section 325 continues the first clause of former Fish and Game Code Section 35
32 without change.

33 **§ 330. “Deeper nearshore species”**

34 330. “Deeper nearshore species” means those finfish identified as deeper
35 nearshore species in regulations adopted by the commission pursuant to Section
36 22620.

37 **Comment.** Section 330 generalizes former Fish and Game Code Section 9000.5(b).

1 **Note.** Existing Fish and Game Code Section 9000.5(b) (which would be continued by
2 proposed Section 330) provides a definition of the term “deeper nearshore species,” for purposes
3 of the article in which that section appears.

4 **The Commission invites comment on whether it would be problematic to generalize the**
5 **definition so that it applies code-wide.**

6 **§ 335. “Department”**

7 335. “Department” means the Department of Fish and Wildlife.

8 **Comment.** Section 335 continues former Fish and Game Code Section 37 without change.

9 **§ 340. “Depressed”**

10 340. “Depressed,” with regard to a marine fishery, means the condition of a
11 fishery for which the best available scientific information, and other relevant
12 information that the commission or department possesses or receives, indicates a
13 declining population trend has occurred over a period of time appropriate to that
14 fishery. With regard to fisheries for which management is based on maximum
15 sustainable yield, or in which a natural mortality rate is available, “depressed”
16 means the condition of a fishery that exhibits declining fish population abundance
17 levels below those consistent with maximum sustainable yield.

18 **Comment.** Section 340 generalizes former Fish and Game Code Section 90.7.

19 **Note.** Existing Fish and Game Code Section 90.7 (which would be continued by proposed
20 Section 340) provides a definition of the term “depressed” with regard to a marine fishery, for
21 purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section
22 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing
23 Section 90.

24 **The Commission invites comment on whether it would be problematic to generalize the**
25 **definition so that it applies code-wide.**

26 **§ 345. “Director”**

27 345. “Director” means the Director of Fish and Wildlife.

28 **Comment.** Section 345 continues former Fish and Game Code Section 39 without change.

29 **§ 350. “Discards”**

30 350. “Discards” means fish that are taken in a fishery but are not retained
31 because they are of an undesirable species, size, sex, or quality, or because they
32 are required by law not to be retained.

33 **Comment.** Section 350 generalizes former Fish and Game Code Section 91.

34 **Note.** Existing Fish and Game Code Section 91 (which would be continued by proposed
35 Section 350) provides a definition of the term “discards” for purposes of existing Section 1700,
36 provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all
37 regulations adopted pursuant to those provisions. See existing Section 90.

38 **The Commission invites comment on whether it would be problematic to generalize the**
39 **definition so that it applies code-wide.**

1 **§ 355. “District”**

2 355. “District” means fish and wildlife district.

3 **Comment.** Section 355 continues former Fish and Game Code Section 41 without substantive
4 change.

5 **§ 360. “Ecosystem-based management”**

6 360. “Ecosystem-based management” means an environmental management
7 approach relying on credible science that recognizes the full array of interactions
8 within an ecosystem, including humans, rather than considering single issues,
9 species, or ecosystem services in isolation.

10 **Comment.** Section 360 continues former Fish and Game Code Section 43 without substantive
11 change.

12 **§ 365. “Essential fishery information”**

13 365. “Essential fishery information,” with regard to a marine fishery, means
14 information about fish life history and habitat requirements; the status and trends
15 of fish populations, fishing effort, and catch levels; fishery effects on fish age
16 structure and on other marine living resources and users, and any other
17 information related to the biology of a fish species or to taking in the fishery that is
18 necessary to permit fisheries to be managed according to the requirements of this
19 code.

20 **Comment.** Section 365 generalizes former Fish and Game Code Section 93.

21 **Note.** Existing Fish and Game Code Section 93 (which would be continued by proposed
22 Section 365) provides a definition of the term “essential fishery information” with regard to a
23 marine fishery, for purposes of existing Section 1700, provisions contained in Division 6
24 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to
25 those provisions. See existing Section 90.

26 **The Commission invites comment on whether it would be problematic to generalize the**
27 **definition so that it applies code-wide.**

28 **§ 370. “Exotic nonresident game bird”**

29 370. “Exotic nonresident game bird” means a bird of the order Galliformes
30 (pheasant, grouse, quail) that is not established as a wild resident population in this
31 state.

32 **Comment.** Section 370 continues former Fish and Game Code Section 3514 without
33 substantive change.

34 **Note.** It is unclear whether the parenthetical in existing Fish and Game Code Section 3514
35 (which would be continued by proposed Section 370) – “(pheasant, grouse, quail)” – is meant to
36 be merely illustrative, or is intended as a substantive limitation on the types of birds that are
37 included in the definition of “exotic nonresident game birds.”

38 The order Galliformes includes a number of types of birds that are not listed in the
39 parenthetical (e.g., partridges, turkeys, ptarmigans, guineafowl). If nonresident varieties of those
40 types of birds were introduced into California, would they be within the scope of the definition?

41 **The Commission invites comment on this issue.**

1 **§ 375. “Finfish”**

2 375. “Finfish” means any species of bony fish or cartilaginous fish.

3 **Comment.** Section 375 is drawn from Section 1.46 of Title 14 of the California Code of
4 Regulations. It is added for drafting convenience.

5 **§ 380. “Fish”**

6 380. “Fish” means a wild fish, mollusk, crustacean, invertebrate, amphibian, or
7 part, spawn, or ovum of any of those animals.

8 **Comment.** Section 380 continues former Fish and Game Code Section 45 without substantive
9 change.

10 The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference
11 to animal generally includes part of animal). It is retained solely for clarity, and is not intended to
12 affect the meaning of any other provision of this code that includes or omits a reference to a
13 “part” of an animal.

14 **§ 385. “Fish importer”**

15 385. “Fish importer” means a person engaging in an activity for which a fish
16 importer’s license is required pursuant to Section 20350.

17 **Comment.** Section 385 is drawn from former Fish and Game Code Section 8036(a). It is added
18 for drafting convenience.

19 **Note.** Proposed Section 385 is drawn from existing Fish and Game Code Section 8036(a).

20 **The Commission invites comment on whether it would be problematic to include in the**
21 **proposed law and generalize a definition of the term “fish importer” as set forth in**
22 **proposed Section 385 that would apply code-wide.**

23 **§ 390. “Fish processor”**

24 390. “Fish processor” means a person engaging in an activity for which a fish
25 processor’s license is required pursuant to Section 20400.

26 **Comment.** Section 390 is drawn from former Fish and Game Code Section 8034. It is added
27 for drafting convenience.

28 **Note.** Proposed Section 390 is drawn from existing Fish and Game Code Section 8034(a).
29 However, the term is used without a corresponding definition elsewhere in the existing code. See,
30 e.g., existing Fish and Game Code §§ 7232, 8110.

31 **The Commission invites comment on whether it would be problematic to include in the**
32 **proposed law and generalize a definition of the term “fish processor” as set forth in**
33 **proposed Section 390 that would apply code-wide.**

34 **§ 395. “Fish receiver”**

35 395. “Fish receiver” means a person engaging in an activity for which a fish
36 receiver’s license is required pursuant to Section 20450.

37 **Comment.** Section 395 is drawn from former Fish and Game Code Section 8033. It is added
38 for drafting convenience.

39 **Note.** Proposed Section 395 is drawn from existing Fish and Game Code Section 8033.
40 However, the term is used without a corresponding definition elsewhere in the existing code. See,
41 e.g., existing Fish and Game Code §§ 7850.5, 8041, 8047.

1 **The Commission invites comment on whether it would be problematic to include in the**
2 **proposed law and generalize a definition of the term “fish receiver” as set forth in proposed**
3 **Section 3905 that would apply code-wide.**

4 **§ 400. “Fish retailer”**

5 400. “Fish retailer” means a person engaging in an activity for which a fish
6 retailer’s license is required pursuant to Section 20500.

7 **Comment.** Section 400 is drawn from former Fish and Game Code Section 8033.5(a). It is
8 added for drafting convenience.

9 **Note.** Proposed Section 400 is drawn from existing Fish and Game Code Section 8033.5(a).

10 **The Commission invites comment on whether it would be problematic to include in the**
11 **proposed law and generalize a definition of the term “fish retailer” as set forth in proposed**
12 **Section 400 that would apply code-wide.**

13 **§ 405. “Fish wholesaler”**

14 405. “Fish wholesaler” means a person engaging in an activity for which a fish
15 wholesaler’s license is required pursuant to Section 20550.

16 **Comment.** Section 405 is drawn from former Fish and Game Code Section 8035. It is added
17 for drafting convenience.

18 **Note.** Proposed Section 405 is drawn from existing Fish and Game Code Section 8035.

19 **The Commission invites comment on whether it would be problematic to include in the**
20 **proposed law and generalize a definition of the term “fish wholesaler” as set forth in**
21 **proposed Section 405 that would apply code-wide.**

22 **§ 410. “Fishery”**

23 410. “Fishery” means both of the following:

24 (a) One or more populations of marine fish or marine plants that may be treated
25 as a unit for purposes of conservation and management and that are identified on
26 the basis of geographical, scientific, technical, recreational, and economic
27 characteristics.

28 (b) Fishing for, harvesting, or catching the populations described in subdivision
29 (a).

30 **Comment.** Section 410 generalizes former Fish and Game Code Section 94.

31 **Note.** Existing Fish and Game Code Section 94 (which would be continued by proposed
32 Section 410) provides a definition of the term “fishery” for purposes of existing Section 1700,
33 provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all
34 regulations adopted pursuant to those provisions. See existing Section 90. However, the term is
35 used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish
36 and Game Code §§ 1000.6, 1068, 1174.

37 **The Commission invites comment on whether it would be problematic to generalize the**
38 **definition so that it applies code-wide.**

39 **§ 415. “Fully protected amphibian”**

40 415. “Fully protected amphibian” means any of the following amphibians:

41 (a) Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*).

1 (b) Limestone salamander (*Hydromantes brunus*).

2 (c) Black toad (*Bufo boreas exsul*).

3 **Comment.** Section 415 continues former Fish and Game Code Section 5050(b)(3)-(5) without
4 substantive change.

5 **§ 420. “Fully protected bird”**

6 420. “Fully protected bird” means any of the following birds:

7 (a) American peregrine falcon (*Falco peregrinus anatum*).

8 (b) Brown pelican.

9 (c) California black rail (*Laterallus jamaicensis coturniculus*).

10 (d) California clapper rail (*Rallus longirostris obsoletus*).

11 (e) California condor (*Gymnogyps californianus*).

12 (f) California least tern (*Sterna albifrons browni*).

13 (g) Golden eagle.

14 (h) Greater sandhill crane (*Grus canadensis tabida*).

15 (i) Light-footed clapper rail (*Rallus longirostris levipes*).

16 (j) Southern bald eagle (*Haliaeetus leucocephalus leucocephalus*).

17 (k) Trumpeter swan (*Cygnus buccinator*).

18 (l) White-tailed kite (*Elanus leucurus*).

19 (m) Yuma clapper rail (*Rallus longirostris yumanensis*).

20 **Comment.** Section 420 continues former Fish and Game Code Section 3511(b) without
21 substantive change.

22 **§ 425. “Fully protected fish”**

23 425. “Fully protected fish” means any of the following fish:

24 (a) Colorado River squawfish (*Ptychocheilus lucius*).

25 (b) Humpback sucker (*Xyrauchen texanus*).

26 (c) Lost River sucker (*Catostomus luxatus*).

27 (d) Modoc sucker (*Catostomus microps*).

28 (e) Mohave chub (*Gila mohavensis*).

29 (f) Owens pupfish (*Cyprinodon radiosus*).

30 (g) Rough sculpin (*Cottus asperimus*).

31 (h) Shortnose sucker (*Chasmistes brevirostris*).

32 (i) Thicktail chub (*Gila crassicauda*).

33 (j) Unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*).

34 **Comment.** Section 425 continues former Fish and Game Code Section 5515(b) without
35 substantive change.

36 **§ 430. “Fully protected mammal”**

37 430. “Fully protected mammal” means any of the following mammals:

38 (a) Bighorn sheep (*Ovis canadensis*), except a mature Nelson bighorn ram
39 (subspecies *Ovis canadensis nelsoni*) when the object of sport hunting authorized
40 by subdivision (b) of Section 35900.

- (b) Guadalupe fur seal (*Arctocephalus townsendi*).
- (c) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- (d) Northern elephant seal (*Mirounga angustirostris*).
- (e) Pacific right whale (*Eubalaena sieboldi*).
- (f) Ring-tailed cat (genus *Bassariscus*).
- (g) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- (h) Southern sea otter (*Enhydra lutris nereis*).
- (i) Wolverine (*Gulo luscus*).

Comment. Section 430 continues former Fish and Game Code Section 4700(b) without substantive change.

Note. Existing Fish and Game Code Section 4700(b)(2) (which would be continued by proposed Section 430(a)) provides that bighorn sheep in general are fully protected mammals, “except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 4902.” However, existing Section 4902(b) provides only for the hunting of mature Nelson bighorn rams, and appears to provide that all other Nelson bighorn sheep remain fully protected mammals. Proposed Section 430 would therefore except only mature Nelson bighorn rams from the classification of bighorn sheep as fully protected mammals.

The Commission invites comment on whether this revision would cause any substantive change in the meaning of existing Section 4700(b).

§ 435. “Fur-bearing mammal”

435. “Fur-bearing mammal” means any of the following mammals:

- (a) Badger.
- (b) Beaver.
- (c) Fisher.
- (d) Gray fox.
- (e) Kit fox.
- (f) Mink.
- (g) Muskrat.
- (h) Pine marten.
- (i) Raccoon.
- (j) Red fox.
- (k) River otter.

Comment. Section 435 continues former Fish and Game Code Section 3900 without substantive change.

§ 440. “Fully protected reptile”

440. “Fully protected reptile” means either of the following reptiles:


- (a) Blunt-nosed leopard lizard (*Crotaphytus wislizenii silus*).
- (b) San Francisco garter snake (*Thamnophis sirtalis tetrataenia*).

Comment. Section 440 continues former Fish and Game Code Section 5050(b)(1)-(2) without substantive change.

1 **§ 445. “Game amphibian”**

2 445. “Game amphibian” means an amphibian that can be lawfully taken for a
3 noncommercial purpose.

4 **Comment.** Section 445 is new. It is added for drafting convenience.

5  **Note.** Proposed Section 445 would define the undefined term “game amphibian.” **The**
6 **Commission invites comment on whether the proposed definition would change existing law**
7 **in a problematic way.**

8 **§ 450. “Game bird”**


9 450. “Game bird” means a resident game bird or a migratory game bird.

10 **Comment.** Section 450 continues former Fish and Game Code Section 3500(c) without
11 substantive change.

12 **§ 455. “Game fish”**

13 455. “Game fish” means a fish that can be lawfully taken for a noncommercial
14 purpose.

15 **Comment.** Section 455 is new. It is added for drafting convenience.

16  **Note.** Proposed Section 455 would define the undefined term “game fish,” which is used in
17 existing Fish and Game Code Sections 307, 2003, 2005, and 8183. **The Commission invites**
18 **comment on whether the proposed definition would change existing law in a problematic**
19 **way.**

20 **§ 460. “Game mammal”**

21 460. (a) “Game mammal” means any of the following mammals:

22 (1) Black and brown or cinnamon bear (genus *Euarctos*).

23 (2) Deer (genus *Odocoileus*).

24 (3) Elk (genus *Cervus*).

25 (4) Jackrabbit and varying hare (genus *Lepus*), cottontails, brush rabbits, pigmy
26 rabbits (genus *Sylvilagus*).

27 (5) Mature Nelson bighorn ram (subspecies *Ovis canadensis nelsoni*), only when
28 the object of sport hunting authorized by subdivision (b) of Section 35900.

29 (6) Mountain lion (genus *Felis*).

30 (7) Prong-horned antelope (genus *Antilocapra*).

31 (8) Tree squirrel (genus *Sciurus* and *Tamiasciurus*).

32 (9) Wild pig, including feral pig and European wild boar (genus *Sus*).

33 (b) Notwithstanding subdivision (a) or any other provision of this code, the
34 mountain lion (genus *Felis*) shall not be listed as, or considered to be, a game
35 mammal by the department or the commission.

36 (c) Section 1025 does not apply to subdivision (b). Neither the commission nor
37 the department shall adopt any regulation that conflicts with or supersedes this
38 subdivision, or subdivision (b).

39 **Comment.** Subdivisions (a)(1)-(4) and (a)(6)-(9) of Section 460 continue former Fish and
40 Game Code Section 3950(a) without substantive change.

Subdivision (a)(5) continues former Fish and Game Code Section 3950(b) without substantive change.

Subdivisions (b) and (c) restate former Fish and Game Code Section 3950.1 without substantive change.

Note. Existing Fish and Game Code Section 3950.1 (which would be continued by proposed Section 460(b) and (c)) was added to the existing code in 1990 pursuant to an initiative statute, Proposition 117.

Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be amended or repealed by the Legislature only when expressly permitted by the text of the initiative statute. The text of Proposition 117 provides in pertinent part that any section added to the Fish and Game Code by the proposition may be subsequently amended by the Legislature “only by a statute approved by a vote of four-fifths of the members of both houses of the Legislature,” and that any such amendment “shall be consistent with, and further the purposes of,” the proposition. The text does not address a subsequent repeal of any section added by the proposition.

However, courts have held that, for the provisions of Article 2, Section 10(c), a legislative enactment only amends an initiative statute when it “prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010). (The Commission has located no authority directly addressing whether this principle also applies to a repeal of an initiative statute.)

Based on interpretative case law, the office of Legislative Counsel has informally expressed to the Commission its view that the repeal and recodification of an initiative statute in a single enactment is not precluded by Article 2, Section 10(c), if the recodification does not substantively change the meaning of the repealed initiative statute.

Existing Section 3950.1 reads as follows:

“3950.1. (a) Notwithstanding Section 3950 or any other provision of this code, the mountain lion (genus *Felis*) shall not be listed as, or considered to be, a game mammal by the department or the commission.

(b) Section 219 does not apply to this section. Neither the commission nor the department shall adopt any regulation that conflicts with or supersedes this section.”

The Commission invites comment on whether the proposed recodification of existing Section 3950.1 would substantively change the meaning of that provision, or would for some other reason violate Article 2, Section 10(c) of the California Constitution.

§ 465. “Game reptile”

465. “Game reptile” means a reptile that can be lawfully taken for a noncommercial purpose.

Comment. Section 465 is new. It is added for drafting convenience.

Note. Proposed Section 465 would define the undefined term “game reptile.” **The Commission invites comment on whether the proposed definition would change existing law in a problematic way.**

§ 470. “General trap permit”

470. “General trap permit” means a valid permit to take fish for a commercial purpose issued pursuant to Section 19205 that has not been suspended or revoked.

Comment. Section 470 generalizes former Fish and Game Code Section 9000.5(c).

Note. Existing Fish and Game Code Section 9000.5(c) (which would be continued by proposed Section 470) provides a definition of the term “general trap permit,” for purposes of the article in which that section appears.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 475. “Guide boat”

475. “Guide boat” means a boat or vessel under 25 feet in length, which is used by a guide, who is licensed under Title 4 (commencing with Section 8800) of Part 1 of Division 6, in inland waters for any of the following purposes:

(1) For the business of packing or guiding.

(2) For compensation, to assist another person in taking or attempting to take any fish or amphibian.

(3) For compensation, to assist another person in locating any bird or mammal.

Comment. Section 475 continues former Fish and Game Code Section 46 without substantive change.

§ 480. “Hook” and related terms

480. “Hook” or “fishhook” means an implement to catch or hold fish or amphibians. “Single hook” means any hook with one point and with or without a barb; “double hook” means any hook with two points and with or without barbs; “treble or triple hook” means any hook with three points and with or without barbs. “Snag” or “gaff” hooks are hooks with or without handles used to take fish in such manner that the fish does not take the hook voluntarily in its mouth.

Comment. Section 480 continues former Fish and Game Code Section 48 without substantive change.

§ 485. “Kelp”


485. “Kelp” means kelp or other marine aquatic plants and the seeds thereof.

Comment. Section 485 continues former Fish and Game Code Section 51 without change.

§ 490. “Korean trap”

490. “Korean trap” means a molded plastic cylinder that does not exceed 6 inches in diameter and does not exceed 24 inches in length.

Comment. Section 490 generalizes former Fish and Game Code Section 9000.5(d).

 **Note.** Existing Fish and Game Code Section 9000.5(d) (which would be continued by proposed Section 490) provides a definition of the term “Korean trap,” for purposes of the article in which that section appears.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 495. “Limited entry fishery”

495. “Limited entry fishery” means a fishery in which the number of persons who may participate or the number of vessels that may be used in taking a specified species of fish is limited by statute or regulation.

Comment. Section 495 continues former Fish and Game Code Section 8100 without change.

1 **§ 500. “Live freshwater bait fish dealer”**

2 500. “Live freshwater bait fish dealer” means a person engaging in an activity
3 for which a live freshwater bait fish license is required pursuant to Section 22100.

4 **Comment.** Section 500 is drawn from former Fish and Game Code Section 8460. It is added
5 for drafting convenience.

6 **Note.** Proposed Section 500 is drawn from existing Fish and Game Code Section 8460.

7 **The Commission invites comment on whether it would be problematic to include in the**
8 **proposed law and generalize a definition of the term “live freshwater bait fish dealer” as set**
9 **forth in proposed Section 500 that would apply code-wide.**

10 **§ 505. “Mammal”**

11 505. “Mammal” means a wild or feral mammal or part of a wild or feral
12 mammal, but not a wild, feral, or undomesticated burro.

13 **Comment.** Section 505 continues former Fish and Game Code Section 54 without change.

14 The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference
15 to animal generally includes part of animal). It is retained solely for clarity, and is not intended to
16 affect the meaning of any other provision of this code that includes or omits a reference to a
17 “part” of an animal.

18 **§ 510. “Marine aquaria collector”**

19 510. “Marine aquaria collector” means a person engaging in an activity for
20 which a marine aquaria collector’s permit is required pursuant to Section 20705.

21 **Comment.** Section 510 is drawn from former Fish and Game Code Section 8597(a). It is added
22 for drafting convenience.

23 **Note.** Proposed Section 510 is drawn from existing Fish and Game Code Section 8597(a).

24 **The Commission invites comment on whether it would be problematic to include in the**
25 **proposed law and generalize a definition of the term “marine aquaria collector” as set forth**
26 **in proposed Section 510 that would apply code-wide.**

27 **§ 515. “Marine aquaria receiver”**

28 515. “Marine aquaria receiver” means a person engaging in an activity for which
29 a marine aquaria receiver’s license is required pursuant to Section 20600.

30 **Comment.** Section 515 is drawn from former Fish and Game Code Section 8033.1(a). It is
31 added for drafting convenience.

32 **Note.** Proposed Section 515 is drawn from existing Fish and Game Code Section 8597(a).
33 However, the term is used without a corresponding definition elsewhere in the existing code. See,
34 e.g., existing Fish and Game Code § 8043.1.

35 **The Commission invites comment on whether it would be problematic to include in the**
36 **proposed law and generalize a definition of the term “marine aquaria receiver” as set forth**
37 **in proposed Section 515 that would apply code-wide.**

38 **§ 520. “Marine finfish aquaculture”**

39 520. “Marine finfish aquaculture” means the propagation, cultivation, or
40 maintenance of finfish species in the waters of the Pacific Ocean that are regulated
41 by this state.

1 **Comment.** Section 520 continues former Fish and Game Code Section 54.5 without change.

2 **§ 525. “Marine living resources”**

3 525. “Marine living resources” includes all wild mammals, birds, reptiles, fish,
4 and plants that normally occur in or are associated with salt water, and the marine
5 habitats upon which these animals and plants depend for their continued viability.

6 **Comment.** Section 525 generalizes former Fish and Game Code Section 96.

7 **Note.** Existing Fish and Game Code Section 96 (which would be continued by proposed
8 Section 525) provides a definition of the term “marine living resources” for purposes of existing
9 Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing
10 code, and all regulations adopted pursuant to those provisions. See existing Section 90. However,
11 the term is used without a corresponding definition elsewhere in the existing code. See, e.g.,
12 existing Fish and Game Code § 93.

13 **The Commission invites comment on whether it would be problematic to generalize the**
14 **definition so that it applies code-wide.**

15 **§ 530. “Marine mammal”**

16 530. “Marine mammal” means any of the following mammals:

- 17 (a) Dolphin
- 18 (b) Porpoise.
- 19 (c) Sea lion.
- 20 (d) Sea otter.
- 21 (e) Seal.
- 22 (f) Whale.

23 **Comment.** Section 530 generalizes former Fish and Game Code Section 4500(c).

24 **Note.** Existing Fish and Game Code Section 4500(c) (which would be continued by proposed
25 Section 530) provides a definition of the term “marine mammal,” for purposes of the chapter in
26 which that provision appears. However, the term is used without a corresponding definition
27 elsewhere in the existing code. See, e.g., existing Fish and Game Code §§ 7712, 8420, 8609.

28 **The Commission invites comment on whether it would be problematic to generalize the**
29 **definition so that it applies code-wide.**

30 **§ 535. “Master”**

31 535. “Master,” with regard to a vessel, means the person on board a vessel who
32 is in charge of the vessel.

33 **Comment.** Section 535 continues the 3rd paragraph of former Fish and Game Code Section
34 12002.7, and former Fish and Game Code Section 12002.8(f), without substantive change.

35 **§ 540. “Maximum sustainable yield”**

36 540. “Maximum sustainable yield” in a marine fishery means the highest
37 average yield over time that does not result in a continuing reduction in stock
38 abundance, taking into account fluctuations in abundance and environmental
39 variability.

40 **Comment.** Section 540 generalizes former Fish and Game Code Section 96.5.

Note. Existing Fish and Game Code Section 96.5 (which would be continued by proposed Section 540) provides a definition of the term “maximum sustainable yield” in a marine fishery for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used in that context without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code §§ 97, 98.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 545. “Migratory game bird”

545. “Migratory game bird” means any of the following birds:

- (a) Band-tailed pigeon.
- (b) Coot.
- (c) Duck.
- (d) Gallinule.
- (e) Goose.
- (f) Jacksnipe.
- (g) Western mourning dove.
- (h) White-winged dove.

Comment. Section 545 continues former Fish and Game Code Section 3500(b) without substantive change.

§ 550. “Mile”

550. “Mile” means either a statute mile (5,280 feet) or a nautical mile (6,077 feet) depending on the application. Statute miles shall be the unit of measurement for all land masses, rivers, streams, creeks, and inland bodies of water. Nautical miles shall be the unit of measurement for all marine waters.

Comment. Section 550 continues former Fish and Game Code Section 55 without change.

§ 555. “Native California trout”

555. “Native California trout” means any of the following fish:

- (a) California golden trout.
- (b) Coastal cutthroat trout.
- (c) Coastal rainbow trout/steelhead.
- (d) Eagle Lake rainbow trout.
- (e) Goose Lake redband trout.
- (f) Kern River rainbow trout.
- (g) Lahontan cutthroat trout.
- (h) Little Kern golden trout.
- (i) McCloud River redband trout.
- (j) Paiute cutthroat trout.
- (k) Warner Valley redband trout.

Comment. Section 555 continues former Fish and Game Code Section 7261 without substantive change.

1 **§ 557. “Native plant”**

2 557. “Native plant” means a plant growing in a wild uncultivated state, which is
3 normally found native to the plantlife of this state.

4 **Comment.** Section 557 generalizes the second sentence of former Fish and Game Code
5 Section 1901.

6 **Note.** Proposed Section 557 would generalize the definition of “native plant,” which
7 currently only applies to existing Sections 1900-1913. Existing provisions that currently use the
8 term “native plant” without definition include existing Sections 1580, 1755, 1756, 1760-1763,
9 1771, 1801, 1925, 2781, 4180, 10667, and 13014.

10 **The Commission invites comment on whether applying the definition to the provisions of**
11 **the proposed law that continue those existing provisions would cause any problems.**

12 **§ 560. “Nearshore species”**

13 560. “Nearshore species” means those finfish identified as nearshore species in
14 regulations adopted by the commission pursuant to Section 22620.

15 **Comment.** Section 560 generalizes former Fish and Game Code Section 9000.5(e).

16 **Note.** Existing Fish and Game Code Section 9000.5(e) (which would be continued by
17 proposed Section 560) provides a definition of the term “nearshore species,” for purposes of the
18 article in which that section appears.

19 **The Commission invites comment on whether it would be problematic to generalize the**
20 **definition so that it applies code-wide.**

21 **§ 565. “Net”**

22 565. “Net” means any gear made of any kind of twine, thread, string, rope, wire,
23 wood, or other materials used for the gilling, entangling, trapping, or impounding
24 fish.

25 **Comment.** Section 565 continues former Fish and Game Code Section 56 without change.

26 **§ 570. “Nongame bird”**

27 570. “Nongame bird” means a bird occurring naturally in California that is not a
28 resident game bird, migratory game bird, or fully protected bird.

29 **Comment.** Section 570 continues the first sentence of former Fish and Game Code Section
30 3800(a) without substantive change.

31 **§ 575. “Nongame mammal”**

32 575. “Nongame mammal” means any of the following mammals:

33 (a) A mammal occurring naturally in California that is not a game mammal,
34 fully protected mammal, or fur-bearing mammal.

35 (b) A house cat (*Felis domesticus*) found within the limits of a fish and game
36 refuge, except if in the residence of its owner or on the grounds adjacent to that
37 residence.


38 **Comment.** Subdivision (a) of Section 575 continues the first sentence of former Fish and
39 Game Code Section 4150 without substantive change.

40 Subdivision (b) continues former Fish and Game Code Section 4151 without substantive
41 change.

1 **§ 580. “Nonresident”**

2 580. “Nonresident” means a person who is not a resident as defined in Section
3 660.

4 **Comment.** Section 580 restates former Fish and Game Code Section 57 to reconcile the
5 definition of the term “nonresident” with the definition of the term “resident” in former Fish and
6 Game Code Section 70. See also Section 660 (“resident”).

7  **Note.** Proposed Section 580 would restate existing Fish and Game Code Section 57 to
8 eliminate an overlap between the definition of “nonresident” in that section and the definition of
9 “resident” in existing Section 70 (which would be continued by proposed Section 660).

10 **The Commission requests public comment on whether the revision would have any**
11 **problematic effect.**

12 **§ 585. “Oath”**

13 585. “Oath” includes affirmation.

14 **Comment.** Section 585 continues former Fish and Game Code Section 60 without change.

15 **§ 590. “Ocean ranching”**

16 590. “Ocean ranching” means aquaculture where juvenile anadromous fish are
17 reared and released into state waters to grow and return to an aquaculture facility
18 to be harvested commercially.

19 **Comment.** Section 590 continues former Fish and Game Code Section 61 without change.

20 **§ 595. “Open season” and “season”**

21 595. “Open season” means that period of time during which the taking of birds,
22 mammals, fish, reptiles, or amphibians is allowed as prescribed in this code and
23 regulations adopted by the commission. If used to define the period of time during
24 which take is allowed, “season” means “open season.”

25 **Comment.** Section 595 continues former Fish and Game Code Section 62 without change.

26 **§ 600. “Optimum yield”**


27 600. “Optimum yield,” with regard to a marine fishery, means the amount of
28 fish taken in a fishery that does all of the following:

29 (a) Provides the greatest overall benefit to the people of California, particularly
30 with respect to food production and recreational opportunities, and takes into
31 account the protection of marine ecosystems.

32 (b) Is the maximum sustainable yield of the fishery, as reduced by relevant
33 economic, social, or ecological factors.

34 (c) In the case of an overfished fishery, provides for rebuilding to a level
35 consistent with producing maximum sustainable yield in the fishery.

36 **Comment.** Section 600 generalizes former Fish and Game Code Section 97.

37  **Note.** Existing Fish and Game Code Section 97 (which would be continued by proposed
38 Section 600) provides a definition of the term “optimum yield,” with regard to a marine fishery,
39 for purposes of existing Section 1700, provisions contained in Division 6 (commencing with
40 Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See

existing Section 90. However, the term is used in that context without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code § 99.5.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 605. “Overfished”

605. “Overfished,” with regard to a marine fishery, means both of the following:

(a) A depressed fishery.

(b) A reduction of take in the fishery is the principal means for rebuilding the population.

Comment. Section 605 generalizes former Fish and Game Code Section 97.5.

Note. Existing Fish and Game Code Section 97.5 (which would be continued by proposed Section 605) provides a definition of the term “overfished” with regard to a marine fishery for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used in that context without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code § 97.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 610. “Overfishing”

610. “Overfishing” means a rate or level of taking that the best available scientific information, and other relevant information that the commission or department possesses or receives, indicates is not sustainable or that jeopardizes the capacity of a marine fishery to produce the maximum sustainable yield on a continuing basis.

Comment. Section 610 generalizes former Fish and Game Code Section 98.

Note. Existing Fish and Game Code Section 98 (which would be continued by proposed Section 610) provides a definition of the term “overfishing” for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code § 14001.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 615. “Participants”

615. “Participants” in regard to a fishery means the sportfishing, commercial fishing, and fish receiving and processing sectors of the fishery.

Comment. Section 615 generalizes former Fish and Game Code Section 98.2.

Note. Existing Fish and Game Code Section 98.2 (which would be continued by proposed Section 615) provides a definition of the term “participants” in regard to a fishery for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used in that context without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code § 2855(b)(4).

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 620. “Person”

620. “Person” means any natural person or any partnership, corporation, limited liability company, trust, or other type of association.

Comment. Section 620 continues former Fish and Game Code Section 67 without change.

§ 625. “Population”

625. “Population” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

Comment. Section 625 generalizes a part of former Fish and Game Code Section 98.5. See also Section 745 (“stock”).

Note. Existing Fish and Game Code Section 98.5 (which would be continued by proposed Section 625) provides a definition of the term “population” for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code §§ 1726.4, 15007, 15400.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 630. “Popup”

630. “Popup” means a mechanism capable of releasing a submerged buoy at a predetermined time.

Comment. Section 630 generalizes former Fish and Game Code Section 9000.5(f).

Note. Existing Fish and Game Code Section 9000.5(f) (which would be continued by proposed Section 630) provides a definition of the term “popup,” for purposes of the article in which that section appears.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 635. “Possession limit”

635. “Possession limit” means the maximum, in number or amount, of birds, mammals, fish, reptiles, or amphibians that may be lawfully possessed by one person.

Comment. Section 635 continues former Fish and Game Code Section 19 without change.

§ 640. “Project”

640. “Project” has the same meaning as defined in Section 21065 of the Public Resources Code.

Comment. Section 640 continues the definition of “project” in former Fish and Game Code Section 711.2(a) without change.

1 **§ 645. “Purchase”**

2 645. “Purchase” means “buy” as defined in Section 260.

3 **Comment.** Section 645 continues former Fish and Game Code Section 68 without substantive
4 change.

5 **§ 650. “Raw fur”**

6 650. “Raw fur” means any of the following:

7 (a) A fur, pelt, or skin that has not been tanned or cured.

8 (b) A pelt that is salt-cured or sun-cured.

9 **Comment.** Section 650 restates the second sentence of former Fish and Game Code Section
10 3905(a) without substantive change.

11 **Note.** Proposed Section 650 is intended to restate the second sentence of existing Fish and
12 Game Code Section 3905(a) to improve its clarity, without changing its substantive effect. The
13 existing provision reads as follows:

14 “‘Raw fur’ means any fur, pelt, or skin that has not been tanned or cured, except that salt-cured
15 or sun-cured pelts are raw furs.”

16 **The Commission invites comment on whether the restatement would cause any**
17 **substantive change in the meaning of the provision.**

18 **§ 655. “Recycled water” or “reclaimed water”**

19 655. “Recycled water” or “reclaimed water” has the same meaning as “recycled
20 water” as defined in subdivision (n) of Section 13050 of the Water Code.

21 **Comment.** Section 655 continues former Fish and Game Code Section 89 without substantive
22 change.

23 **§ 660. “Resident”**

24 660. “Resident” means any person who has resided continuously in the State of
25 California for six months or more immediately prior to the date of application for a
26 license or permit, any person on active military duty with the Armed Forces of the
27 United States or auxiliary branch thereof, or any person enrolled in the Job Corps
28 established pursuant to Section 2883 of Title 29 of the United States Code.

29 **Comment.** Section 660 continues former Fish and Game Code Section 70 without substantive
30 change.

31 **§ 665. “Resident game bird”**

32 665. “Resident game bird” means any of the following birds:

33 (a) California quail and varieties thereof.

34 (b) Dove of the genus *Streptopelia*, including, but not limited to, spotted dove,
35 ringed turtledove, and Eurasian collared-dove.

36 (c) Gambel’s or desert quail.

37 (d) Hungarian partridge.

38 (e) Mountain quail and varieties thereof.

39 (f) Red-legged partridge, including the chukar and other varieties thereof.

40 (g) Ring-necked pheasant and varieties thereof.

- (h) Ruffed grouse.
- (i) Sage hens or sage grouse.
- (j) Sooty or blue grouse and varieties thereof.
- (k) Wild turkey.

Comment. Section 665 continues former Fish and Game Code Section 3500(a) without substantive change.

Note. Existing Fish and Game Code Section 3500(a)(11) (which would be continued by proposed Section 665(k)), lists “wild turkeys of the order Galliformes” as a resident game bird. It is the Commission’s understanding that all wild turkeys are of the order Galliformes, making the reference to the order superfluous. The Commission also notes that existing Section 3683(a)(12), which identifies those resident game birds that constitute upland game birds, refers only to “wild turkeys.”

The Commission invites comment on whether the proposed revision to proposed Section 665(k) is appropriate.

§ 670. “Restricted access”

670. “Restricted access,” with regard to a marine fishery, means a fishery in which the number of persons who may participate, or the number of vessels that may be used in taking a specified species of fish, or the catch allocated to each fishery participant, is limited by statute or regulation.

Comment. Section 670 generalizes former Fish and Game Code Section 99.

Note. Existing Fish and Game Code Section 99 (which would be continued by proposed Section 670) provides a definition of the term “restricted access” with regard to a marine fishery, for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 675. “Round haul net”

675. “Round haul net” means a circle seine, and includes a purse seine, ring net, half ring net, and lampara net.

Comment. Section 675 generalizes former Fish and Game Code Section 8750.

Note. Existing Fish and Game Code Section 8750 (which would be continued by proposed Section 675) provides a definition of the term “round haul net,” for purposes of the article in which that section appears. However, the term is used without a corresponding definition elsewhere in the existing code. See existing Fish and Game Code § 2362.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 680. “Sell”

680. “Sell” includes offer or possess for sale, barter, exchange, or trade.

Comment. Section 680 continues former Fish and Game Code Section 75 without change.

1 § 685. “Set line”

2 685. “Set line” means a line used to take fish that is anchored to the bottom on
3 each end and is not free to drift with the tide or current.

4 **Comment.** Section 685 combines and generalizes the parts of former Fish and Game Code
5 Section 8601 and the second sentence of former Fish and Game Code Section 9029.5 applicable
6 to set lines.

7 **Note.** Existing Fish and Game Code Section 8601 (which would be continued by proposed
8 Section 685) provides a definition of the term “set line,” but limited to the statutory part in which
9 that section appears. See existing Section 7600. Existing Fish and Game Code Section 9029.5
10 provides the same definition, solely for purposes of that section. However, the term is used
11 without a corresponding definition elsewhere in the existing code. See existing Fish and Game
12 Code § 3005.

13 **The Commission invites comment on whether it would be problematic to generalize the**
14 **definition so that it applies code-wide.**

15 § 690. “Set net”

16 690. (a) “Set net” means either of the following:

17 (1) A net used to take fish that is anchored to the bottom on each end and is not
18 free to drift with the tide or current.

19 (2) A net placed so that it will catch or impound fish within a bight, bay, or
20 estuary, or against the shore upon the receding of the tide.

21 (b) Notwithstanding subdivision (a), the following nets are not set nets:

22 (1) A fyke net.

23 (2) A shrimp net.

24 (3) A crab net.

25 **Comment.** Section 690 generalizes the part of former Fish and Game Code Section 8601
26 applicable to set nets.

27 **Note.** Existing Fish and Game Code Section 8601 (which would be continued by proposed
28 Section 690) provides a definition of the term “set net,” but limited to the statutory part in which
29 that section appears. See existing Section 7600.

30 **The Commission invites comment on whether it would be problematic to generalize the**
31 **definition so that it applies code-wide.**

32 § 695. “Signature” or “subscription”

33 695. “Signature” or “subscription” includes mark when the signer or subscriber
34 cannot write, such signer’s or subscriber’s name being written near the mark by a
35 witness who writes his own name near the signer’s or subscriber’s name; but a
36 signature or subscription by mark can be acknowledged or can serve as a signature
37 or subscription to a sworn statement only when two witnesses also sign their own
38 names.

39 **Comment.** Section 695 continues former Fish and Game Code Section 81 without substantive
40 change.

1 **§ 700. “Slurp gun”**

2 700. “Slurp gun” means a self-contained, hand-held device used to capture fish
3 by rapidly drawing water containing fish into a closed chamber.

4 **Comment.** Section 700 continues former Fish and Game Code Section 82 without change.

5 **§ 705. “Spike buck”**

6 705. “Spike buck” means a male deer with unbranched antlers on both sides that
7 are more than three inches in length.

8 **Comment.** Section 705 continues the third sentence of former Fish and Game Code Section
9 200(b)(2) without change.

10 **§ 710. “Spiny lobster”**

11 710. “Spiny lobster” refers to the species *Panulirus interruptus*.

12 **Comment.** Section 710 continues former Fish and Game Code Section 8250 without change.

13 **§ 715. “Sport fishing”**

14 715. “Sport fishing” means the take of a fish, amphibian, or reptile, for a
15 purpose other than profit.

16 **Comment.** Section 715 is new, and added for drafting convenience. It is consistent with former
17 usage. See, e.g., former Fish and Game Code §§ 7145, 7149.05, 7149.2, 7150, 7151, 7180.1.

18 **Notes.** (1) The definition of the term “sport fishing” that proposed Section 715 would add
19 states the activity for which existing law generally requires the issuance of a “sport fishing”
20 license.

21 **The Commission invites comment on whether the addition of this definition to the**
22 **proposed law, or the substitution of the defined term in provisions of the proposed law for**
23 **the activity described in the provision, would be problematic. See, e.g., proposed Sections**
24 **1750, 5100, 8125, 12150, 12850, 12905.**

25 (2) It may appear somewhat counterintuitive that sport fishing would include the take of a
26 reptile. However, as indicated in the Comment to proposed Section 715, that inclusion is clearly
27 consistent with existing law. Moreover, the take of reptiles is so heavily integrated in the sport
28 fishing provisions of the existing code that an attempt to separate and distinguish treatment of
29 reptiles in the proposed law would likely be more problematic. A significant number of
30 provisions would need to be duplicated, and each duplication would increase the risk of
31 fragmenting what may have been intended as a common regulatory scheme.

32 To minimize any confusion, proposed Division 13 of the proposed law (a division that will
33 relate to reptiles), will cross-reference this definition and Part 5 (“Sport Fishing”) of Division 6 of
34 the proposed law.

35 **§ 720. “Spotted fawn”**

36 720. “Spotted fawn” means a deer one year of age or less that has spotted
37 pelage.

38 **Comment.** Section 720 continues the second sentence of former Fish and Game Code Section
39 200(b)(2) without change.

1 **§ 725. “Spouse”**

2 725. “Spouse” includes “registered domestic partner,” as required by Section
3 297.5 of the Family Code.

4 **Comment.** Section 725 continues former Fish and Game Code Section 9.2 without change.

5 **§ 730. “Stamp”**

6 730 “Stamp” includes an electronic validation of privileges issued to the
7 licensee.

8 **Comment.** Section 730 generalizes former Fish and Game Code Section 7700(d).

9 **Note.** Existing Fish and Game Code Section 7700(d) (which would be continued by proposed
10 Section 730) provides a definition of the term “stamp,” for purposes of the chapter in which that
11 section appears. However, the term is used without a corresponding definition elsewhere in the
12 existing code. See, e.g., existing Fish and Game Code §§ 1572, 1573, 3031.2, 5522, 7090, 7149.2,
13 7380, 7852.1, 7852.2, 7857, 12003.5.

14 **The Commission invites comment on whether it would be problematic to generalize the**
15 **definition so that it applies code-wide.**

16 **§ 735. “State”**

17 735. “State” means the State of California, unless applied to the different parts
18 of the United States. In the latter case, it includes the District of Columbia and the
19 territories.

20 **Comment.** Section 735 continues former Fish and Game Code Section 83 without change.

21 **§ 740. “State waters”**

22 740. “State waters” means “waters of the state,” as defined in Section 790.

23 **Comment.** Section 740 continues a part of former Fish and Game Code Section 89.1 without
24 change.

25 **§ 745. “Stock”**

26 745. “Stock” means “population,” as defined in Section 625.

27 **Comment.** Section 745 generalizes a part of former Fish and Game Code Section 98.5.

28 **Note.** Existing Fish and Game Code Section 98.5 (which would be continued by proposed
29 Section 745) provides a definition of the term “stock” for purposes of existing Section 1700,
30 provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all
31 regulations adopted pursuant to those provisions. See existing Section 90. However, the term is
32 used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish
33 and Game Code §§ 1907, 15300, 15512.

34 **The Commission invites comment on whether it would be problematic to generalize the**
35 **definition so that it applies code-wide.**

36 **§ 750. “Sustainable,” “sustainable use,” and “sustainability”**

37 750. “Sustainable,” “sustainable use,” and “sustainability,” with regard to a
38 marine fishery, mean both of the following:

39 (a) Continuous replacement of resources, taking into account fluctuations in
40 abundance and environmental variability.

(b) Securing the fullest possible range of present and long-term economic, social, and ecological benefits, maintaining biological diversity, and, in the case of fishery management based on maximum sustainable yield, taking in a fishery that does not exceed optimum yield.

Comment. Section 750 generalizes former Fish and Game Code Section 99.5.

Note. Existing Fish and Game Code Section 99.5 (which would be continued by proposed Section 750) provides a definition of the terms “sustainable,” “sustainable use,” and “sustainability” with regard to a marine fishery, for purposes of existing Section 1700, provisions contained in Division 6 (commencing with Section 5500) of the existing code, and all regulations adopted pursuant to those provisions. See existing Section 90. However, the term is used without a corresponding definition elsewhere in the existing code. See, e.g., existing Fish and Game Code §§ 363, 1726.1, 15008.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 755. “Take”

755. “Take” means hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.

Comment. Section 755 continues former Fish and Game Code Section 86 without change.

§ 760. “Transport”

760. “Transport” includes offer or receive for transportation.

Comment. Section 760 continues former Fish and Game Code Section 88 without change.

§ 765. “Trawl net”

765. “Trawl net” means a cone or funnel-shaped net that is towed or drawn through the water by a fishing vessel, and includes any gear appurtenant to the net.

Comment. Section 765 generalizes the first sentence of former Fish and Game Code Section 8830.

Note. Existing Fish and Game Code Section 8830 (which would be continued by proposed Section 765) provides a definition of the term “trawl net,” but limited to the statutory part in which that section appears. See existing Section 7600.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

§ 770. “Troll line”

770. “Troll line” means a line with one or more hooks towed by a vessel underway and making way.

Comment. Section 770 generalizes former Fish and Game Code Section 9025.5(b).

Note. Existing Fish and Game Code Section 9025.5(b) (which would be continued by proposed Section 770) provides a definition of the term “troll line,” but limited to the statutory part in which that section appears. See existing Section 7600.

The Commission invites comment on whether it would be problematic to generalize the definition so that it applies code-wide.

1 **§ 775. “Upland game bird”**

2 775. “Upland game bird” means any of the following birds:

- 3 (a) Band-tailed pigeon.
4 (b) California quail and varieties thereof.
5 (c) Dove of the genus *Streptopelia*, including, but not limited to, spotted dove,
6 ringed turtledove, and Eurasian collared dove.
7 (d) Gambel’s or desert quail.
8 (e) Hungarian partridge.
9 (f) Jacksnipe.
10 (g) Mountain quail and varieties thereof.
11 (h) Red-legged partridge including the chukar and other varieties.
12 (i) Ring-necked pheasant and varieties thereof.
13 (j) Ruffed grouse.
14 (k) Sage hen or sage grouse.
15 (l) Sooty or blue grouse.
16 (m) Western mourning dove.
17 (n) White-tailed ptarmigan.
18 (o) White-winged dove.
19 (p) Wild turkey.

20 **Comment.** Section 775 continues former Fish and Game Code Section 3683 without
21 substantive change.

22 **Notes.** (1) Existing Fish and Game Code Section 3683 separately lists the upland game birds
23 that are resident game birds, and those that are migratory game birds. Proposed Section 775
24 would list all upland game birds without indicating whether a listed bird was a resident or
25 migratory game bird.

26 **The Commission invites comment on whether that revision is appropriate.**

27 (2) Existing Fish and Game Code Section 3683(a)(8) identifies a white-tailed ptarmigan as a
28 resident game bird that is also an upland game bird. However, existing Section 3500, which
29 identifies resident game birds, does not list any ptarmigan as a resident game bird.

30 **The Commission invites comment on this apparent discrepancy, and the proper**
31 **classification of the white-tailed ptarmigan.**

32 **§ 780. “Vertical fishing line”**

33 780. “Vertical fishing line” means a fishing line that is anchored to the ocean
34 bottom at one end and attached at the other end on the surface to a fishing vessel
35 or a buoy.

36 **Comment.** Section 780 generalizes the part of the second sentence of former Fish and Game
37 Code Section 9029.5 applicable to a vertical fishing line.

38 **Note.** A part of existing Fish and Game Code Section 9029.5 (which would be continued by
39 proposed Section 780) provides a definition of the term “vertical fishing line,” for purposes of
40 what is referred to as the “subdivision” in which that provision appears. However, Section 9029.5
41 has no subdivisions.

42 **The Commission invites comment on whether it would be problematic to generalize the**
43 **definition so that it applies code-wide.**

1 **§ 785. “Vessel owner”**

2 785. (a) “Vessel owner,” or a reference to an owner of a vessel, means the
3 person or persons designated as the registered owner of a vessel, on a certificate of
4 documentation issued by the United States Coast Guard or on a copy of the vessel
5 registration issued by the vessel registration agency of the state where the owner is
6 a resident.

7 (b) For purposes of this section, the vessel registration agency in California is
8 the Department of Motor Vehicles.

9 **Comment.** Section 785 restates and generalizes former Fish and Game Code Section 7601.

10 **Notes.** (1) Proposed Section 785(a) is intended to restate the first sentence of proposed
11 Section 7601 to clarify the meaning of that sentence, without changing its substantive effect. The
12 existing sentence reads as follows:

13 “‘Owner’ or ‘vessel owner’ means the person or persons designated as the registered owner of
14 a vessel on a certificate of documentation issued by the United States Coast Guard or on a copy of
15 the vessel registration issued by the vessel registration agency of the state where the owner is a
16 resident.”

17 **The Commission invites comment on whether the proposed restatement would cause any**
18 **substantive change in the meaning of the provision.**

19 (2) Existing Section 7601 provides a definition of the terms “vessel owner” and “owner,” but
20 limited to the statutory part in which that section appears. See existing Section 7600. However,
21 the term is used without a corresponding definition elsewhere in the existing code. See existing
22 Fish and Game Code §§ 1012, 6596.1, 7147.

23 **The Commission invites comment on the proposed revision of the definition, and whether**
24 **it would be problematic to generalize the definition so that it applies code-wide.**

25 **§ 790. “Waters of the state,” “waters of this state”**

26 790. “Waters of the state” or “waters of this state” have the same meaning as
27 “waters of the state” as defined in subdivision (e) of Section 13050 of the Water
28 Code.

29 **Comment.** Section 790 continues a part of former Fish and Game Code Section 89.1 without
30 change. See also Section 740 (“state waters”).

31 **§ 795. “Week”**

32 795. “Week” means calendar week.

33 **Comment.** Section 795 continues the second clause of former Fish and Game Code Section 35
34 without change.

35 **§ 800. “Wildlife”**

36 800. “Wildlife” means and includes all wild animals, birds, plants, fish,
37 amphibians, reptiles, and related ecological communities, including the habitat
38 upon which the wildlife depends for its continued viability.

39 **Comment.** Section 800 continues former Fish and Game Code Section 89.5 without change.

DIVISION 6. HUNTING, TRAPPING, AND FISHING GENERALLY

PART 1. GENERAL PROVISIONS

TITLE 1. GENERAL PROHIBITIONS AND OBLIGATIONS

CHAPTER 1. GENERAL PROHIBITIONS

§ 8000. Unauthorized take

8000. (a) It is unlawful to take a bird, mammal, fish, reptile, or amphibian, except as provided in this code or in a regulation adopted pursuant to this code.

(b) Possession of a bird, mammal, fish, reptile, or amphibian, or part of any of those animals, in or on the fields, forests, or waters of this state, or while returning therefrom with fishing or hunting equipment, is prima facie evidence the possessor took the bird, mammal, fish, reptile, amphibian, or part of that animal.

Comment. Section 8000 continues former Fish and Game Code Section 2000 without change. The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

§ 8005. Accidental take

8005. (a) Notwithstanding Sections 1025, 8000, or any other provision of law, and notwithstanding any requirement for a permit or license or other entitlement to take a species, the accidental taking of a bird, mammal, reptile, or amphibian by collision with a motor vehicle while the vehicle is being operated on a road or highway is not a violation of this code or a regulation adopted pursuant to this code.

(b) For purposes of this section, “highway” means highway as defined by Section 360 of the Vehicle Code and “road” means road as defined by Section 527 of the Vehicle Code.

(c) Nothing in this section authorizes a person to possess any bird, mammal, reptile, or amphibian accidentally taken by collision with a motor vehicle as provided in this subdivision. However, accidental takes on the road or highway may be removed by the state or local agency having jurisdiction over the road or highway.

(d) This section does not apply to **Chapter 1.5 (commencing with Section 2050).**

Comment. Section 8005 continues former Fish and Game Code Section 2000.5 without substantive change.

1 **§ 8010. Unlawful possession**

2 8010. It is unlawful to possess a bird, mammal, fish, reptile, amphibian, or part
3 of any of those animals, taken in violation of this code or a regulation adopted
4 pursuant to this code.

5 **Comment.** Section 8010 continues former Fish and Game Code Section 2002 without change.
6 The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference to
7 animal generally includes part of animal). It is retained solely for clarity, and is not intended to
8 affect the meaning of any other provision of this code that includes or omits a reference to a
9 “part” of an animal.

10 **§ 8015. Season and possession limits**

11 8015. (a) It is unlawful to take a mammal, bird, fish, reptile, or amphibian
12 outside of an established season or to exceed a bag limit or possession limit
13 established in this code or by a regulation adopted by the commission. Violation of
14 an established season, bag limit, or possession limit may be charged as a violation
15 of this section or of the specific code section or regulation that establishes the
16 season or limit.

17 (b) Unless otherwise provided, it is unlawful to possess a fish, reptile, or
18 amphibian, except during the open season where the fish, reptile, or amphibian
19 was taken or during the 10-day period immediately following that open season.
20 Any possession limit applicable during the open season applies during that 10-day
21 period.

22 (c) Except as provided in Section 10805, it is unlawful to possess a game bird or
23 mammal except during the open season where taken.

24 **Comment.** Section 8015 continues former Fish and Game Code Section 2001 without
25 substantive change.

26 See also Section 12013.3 (enhanced penalty if violation involves specified animal).

27 **Notes.** (1) Subdivision (b) of proposed Section 8015 is intended to restate subdivision (b) of
28 existing Section 2001 to improve its clarity, without changing its substantive effect. The existing
29 provision reads as follows:

30 “(b) Unless otherwise provided, it is unlawful to possess fish, reptiles, or amphibians except
31 during the open season where taken and for 10 days thereafter; and not more than the possession
32 limit thereof may be possessed during the period after the close of the open season.”

33 **The Commission invites comment on whether the proposed restatement would cause any**
34 **substantive change in the meaning of the provision.**

35 (2) Subdivision (c) refers to “game” birds and mammals. The Commission has two questions
36 regarding this reference.

37 (a) In subdivision (c), is the word “game” meant to modify only “birds,” or both “birds” and
38 “mammals”?

39 (b) What is the rationale for limiting the application of subdivision (c) to “game” birds (and
40 mammals)? Is there a reason that rationale does not apply to subdivisions (a) and (b)?

41 **The Commission invites comment on both of these issues.**

CHAPTER 2. SPECIAL PROHIBITIONS

§ 8100. Violation for personal gain

8100. (a) Any person who illegally takes, possesses, imports, exports, sells, purchases, barter, trades, or exchanges a bird, fish, mammal, reptile, amphibian, or part of any of those animals, for profit or personal gain is guilty of a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) nor more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(b) If a person is convicted of a second or subsequent violation of subdivision (a), that person shall be punished by a fine of not less than ten thousand dollars (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment.

(c) If a second or subsequent violation of subdivision (a) also involves a violation of Section 18040, 18045, 18050, or 18065 that is punishable by subdivision (b) of Section 18250, the offense shall be punishable by a fine of not more than fifty thousand dollars (\$50,000), or by imprisonment pursuant to subdivision (b) of Section 18250, or by both that fine and imprisonment.

(d) Notwithstanding Section 802 of the Penal Code, prosecution of an offense punishable under this section shall be commenced within three years after commission of the offense.

(e) This section does not apply to fish taken pursuant to a commercial fishing license issued pursuant to Section 14550, or fish sold pursuant to a commercial fish business license issued in accordance with Title 9 (commencing with Section 20200) of Part 6 of Division 6.

(f) This section does not supersede Section 33460 or 45850.

(g)(1) Moneys equivalent to 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

(2) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 8100 continues former Fish and Game Code Section 12012 without substantive change.

The reference to a “part” of an animal in this section is superfluous. See Section 95 (reference to animal generally includes part of animal). It is retained solely for clarity, and is not intended to affect the meaning of any other provision of this code that includes or omits a reference to a “part” of an animal.

1 **§ 8105. Triple possession limit**

2 8105. (a) Any person who illegally takes or possesses in the field more than
3 three times the daily bag limit, or who illegally possesses more than three times
4 the legal possession limit, of fish, reptiles, birds, amphibians, or mammals, is
5 guilty of a misdemeanor, and shall be subject to a fine of not less than five
6 thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or
7 imprisonment in a county jail for not more than one year, or by both that fine and
8 imprisonment.

9 (b) If a person is convicted of a second or subsequent violation of subdivision
10 (a), that person shall be punished by a fine of not less than ten thousand dollars
11 (\$10,000), nor more than fifty thousand dollars (\$50,000), or imprisonment in a
12 county jail for not more than one year, or by both that fine and imprisonment.

13 (c) Nothing in this section prohibits a person from giving, receiving, or
14 possessing the legal possession limit of lawfully taken fish, reptiles, birds,
15 amphibians, or mammals.

16 (d) Nothing in this section prohibits a person from giving, receiving, or
17 possessing, at the personal abode of the donor or donee, lawfully taken migratory
18 game birds that are not required to be tagged pursuant to the federal Migratory
19 Bird Treaty Act (16 U.S.C. Sec. 703 et seq.) or regulations adopted pursuant to
20 that act.

21 (e) This section does not supersede Section 33460, 45855, or 45850.

22 (f) Moneys equivalent to 50 percent of the revenue from any fine collected
23 pursuant to this section shall be paid to the county in which the offense was
24 committed, pursuant to Section 3610. The board of supervisors shall first use
25 revenues pursuant to this subdivision to reimburse the costs incurred by the district
26 attorney or city attorney in investigating and prosecuting the violation. Any excess
27 revenues may be expended in accordance with Section 3915.

28 **Comment.** Section 8105 continues former Fish and Game Code Section 12013(a), (b), and (d)-
29 (g) without substantive change.

30 **§ 8110. Torture**

31 8110. (a) Any person who maliciously and intentionally maims, mutilates, or
32 physically tortures any fish, reptile, bird, amphibian, or mammal governed by this
33 code is guilty of a crime, and shall be subject to a fine of not less than five
34 thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or
35 imprisonment in a county jail for not more than one year, or by both that fine and
36 imprisonment. Nothing in this subdivision affects any legal activity pursuant to
37 this code, including, but not limited to, hunting, fishing, trapping, hunting dog
38 training, hunting dog field trials, predation control, and efforts to dispatch a
39 wounded mammal, bird, or fish taken legally.

40 (b) Moneys equivalent to 50 percent of the revenue from any fine collected
41 pursuant to this section shall be paid to the county in which the offense was
42 committed, pursuant to Section 3610. The board of supervisors shall first use

revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 8110 continues former Fish and Game Code Section 12013(c) and (g) without substantive change.

Notes. (1) Under existing law, the provision prohibiting torture of animals is embedded in a section that also punishes exceeding a possession limit by a factor of three. See existing Section 12013. Section 12013 has a number of provisions that apply, by their terms, to the entire section. In analyzing those provisions, the Commission concluded that some of them were not relevant to the prohibition on torture. See Section 12013(d)-(f). Those provisions were continued in proposed Section 8105(c)-(e), but were not continued in Section 8110.

The Commission invites comment on whether that revision would cause any problematic change in the law.

(2) In the second sentence of proposed Section 8110(a), the meaning of the word “affects” could be clearer. If the sentence is meant to create an exemption (as seems to be the case), would it be better to parallel the wording of the first sentence, thus: “This section does not apply to any activity made lawful by this code, including but not limited to....”?

The Commission invites comment on this possible revision.

§ 8115. Prize

8115. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to offer a prize or other inducement as a reward for the taking of a game bird, or the taking of any mammal, fish, reptile, or amphibian, in an individual contest, tournament, or derby.

(b) The department may issue a permit to a person authorizing that person to offer a prize or other inducement as a reward for the taking of a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under 16 years of age or have a physical or mental disability, and if the primary purpose of the contest, tournament, or derby is to introduce those anglers to or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to a person conducting what is generally known as a frog-jumping contest, or, in waters of the Pacific Ocean, what is generally known as a fish contest.

(d) This section does not apply to a person conducting an individual contest, tournament, or derby for the taking of a game bird or game mammal, if the total value of all prizes or other inducements is less than five hundred dollars (\$500) for the individual contest, tournament, or derby.

Comment. Section 8115 restates former Fish and Game Code Section 2003 to make clear that (1) the general prohibition in subdivision (a) applies to game birds, as well as all mammals, fish, reptiles and amphibians, and (2) the exception in subdivision (d) applies only to game birds and game mammals.

In subdivision (b), the word “disability” is not used in any defined sense.

Note. Proposed Section 8115(a) and (d) are intended to restate existing Fish and Game Code Section 2003(a) and (d) without changing their substantive effect, to make clear which references to types of animals are limited to “game” animals.

Existing Section 2003 reads as follows:

“2003. (a) Except as specified in subdivisions (b), (c), and (d), it is unlawful to offer a prize or other inducement as a reward for the taking of a game bird, mammal, fish, reptile, or amphibian in an individual contest, tournament, or derby.

(b) The department may issue a permit to a person authorizing that person to offer a prize or other inducement as a reward for the taking of a game fish, as defined by the commission by regulation, if it finds that there would be no detriment to the resource. The permit is subject to regulations adopted by the commission. The application for the permit shall be accompanied by a fee in the amount determined by the department as necessary to cover the reasonable administrative costs incurred by the department in issuing the permit. However, the department may waive the permit fee if the contest, tournament, or derby is for persons who are under 16 years of age or have a physical or mental disability, and the primary purpose of the contest, tournament, or derby is to introduce those anglers to or educate them about fishing. All permits for which the fee is waived pursuant to this subdivision shall comply with all other requirements set forth in this section.

(c) This section does not apply to a person conducting what is generally known as a frog-jumping contest, or, in waters of the Pacific Ocean, what is generally known as a fish contest.

(d) This section does not apply to a person conducting an individual contest, tournament, or derby for the taking of a game bird or mammal, if the total value of all prizes or other inducements is less than five hundred dollars (\$500) for the individual contest, tournament, or derby.

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of any provision of existing Section 2003.

§ 8120. Property damage

8120. It is unlawful for any person, while taking any bird, mammal, fish, reptile, or amphibian, to cause damage, or assist in causing damage, to real or personal property, or to leave a gate or bar open, or to break down, destroy, or damage a fence, or to tear down or scatter a pile of rails, posts, stone, or wood, or, through carelessness or negligence, to injure any livestock.

Comment. Section 8120 continues former Fish and Game Code Section 2004 without substantive change.

§ 8125. Lights

8125. (a) Except as otherwise provided by this section, it is unlawful to use an artificial light to assist in the taking of a game bird, game mammal, or game fish.

(b) It is unlawful for one or more persons to throw or cast the rays of a spotlight, headlight, or other artificial light on a highway or in a field, woodland, or forest where game mammals, fur-bearing mammals, or nongame mammals are commonly found, or upon a game mammal, fur-bearing mammal, or nongame

mammal, while having in his or her possession or under his or her control a firearm or weapon with which that mammal could be killed, even though the mammal is not killed, injured, shot at, or otherwise pursued.

(c) It is unlawful to use or possess any night vision equipment to assist in the taking of any bird, mammal, amphibian, reptile, or fish. For purposes of this subdivision, “night vision equipment” includes but is not limited to the following:

(1) Any infrared or similar light, used in connection with an electronic viewing device.

(2) Any optical device, including but not limited to binoculars or a scope, that uses electrical or battery powered light amplifying circuits.

(d) This section does not apply to any of the following:

(1) Sport fishing in ocean waters, or other waters where night fishing is permitted, if an artificial light is not used on or as part of the fishing tackle.

(2) Commercial fishing.

(3) The taking of a mammal that is expressly authorized by this code because the mammal is damaging crops, livestock, or other property.

(4) The use of a hand-held flashlight that is no larger and emits no more light than a two-cell, three-volt flashlight, and is not affixed to a weapon.

(5) The use of a lamp or lantern that does not cast a directional beam of light.

(6) Headlights of a motor vehicle that are operated in a usual manner and without attempt or intent to locate a game mammal, fur-bearing mammal, or nongame mammal.

(7) An owner of land devoted to the agricultural industry, or his or her employee, while on that land.

(8) An owner of land devoted to the agricultural industry, or the owner’s employee, while on land controlled by the owner in connection with the agricultural industry.

(9) Other uses as the commission may authorize by regulation.

(e) A person shall not be arrested for violation of this section except by a peace officer.

Comment. Section 8125 continues former Fish and Game Code Section 2005 without substantive change.

See also Sections 8300(b), 31105, 33050, 34700, 35100, 35955, and 33470 (enhanced penalty if violation involves specified animal).

Notes. (1) The exception to this section in existing Section 2005(d)(3) – continued in proposed Section 8125(d)(7) and (8) – is convoluted. It appears to exempt owners of agricultural land and their employees, but not tenants of such land. Is this distinction intended as a matter of policy? If not, would it be sufficient for the exception to apply to “a person who owns or controls land devoted to the agricultural industry, or that person’s employee, while on that land”?

The Commission invites comment on this issue.

(2) Existing Fish and Game Code Section 2005(d)(3) (which would be continued by proposed Section 8125(d)(3)) provides that the section does not apply to the “taking of mammals governed by Article 2 (commencing with Section 4180) of Chapter 3 of Part 3 of Division 4.” In the proposed law, the many provisions contained in that cross-referenced article, which governs the taking of predator mammals, are continued in many different locations.

The Commission invites comment on whether the continuation of that cross-reference in proposed Section 8125(d)(3) by instead describing the subject matter of the cross-reference would cause any problems.

§ 8130. Interference

8130. (a) Except as otherwise provided in this section, it is unlawful for a person, with the specific intent to do so, to interfere with the participation of any individual in the lawful activity of shooting, hunting, fishing, falconry, hunting dog field trials, hunting dog training, or trapping at the location where that activity is taking place.

(b) For purposes of this section, “interfere with” means any action that physically impedes, hinders, or obstructs the lawful pursuit of any activity listed in subdivision (a), including, but not limited to, any of the following:

(1) An action intended to frighten away animals from the location where the lawful activity is taking place.

(2) Placing or maintaining a sign, gate, lock, or barricade that prohibits or denies access to land without authorization from the landowner or lessee or an authorized designee of the landowner or lessee.

(3) Placing food on land not belonging to the person placing the food for purposes of eliminating the lawful ability to hunt due to the presence of bait, as defined in this code or in a regulation adopted pursuant to this code.

(c) Notwithstanding subdivision (a) of Section 4400, a person who violates this section is guilty of an infraction punishable by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or of a misdemeanor.

(d) Any person convicted for a violation of this section that occurred within two years of a prior violation of this section that resulted in a conviction is guilty of a misdemeanor, punishable by imprisonment in a county jail for a period of not more than one year, by a fine of not less than one hundred dollars (\$100) and not to exceed one thousand dollars (\$1,000), or by both imprisonment and fine.

(e) This section does not apply to the actions of any peace officer or personnel of the department in the performance of official duties. This section does not obstruct the rights and normal activities of landowners or tenants, including, but not limited to, farming, ranching, and limiting unlawful trespass.

Comment. Subdivisions (a), (b), (d), and (e) of Section 8130 continue former Fish and Game Code Section 2009(a) and (c)-(f) without substantive change.

Subdivision (c) merges and continues former Fish and Game Code Sections 2009(b) and 12000(b)(1) without substantive change.

Notes. (1) Existing Section 2009(a) requires that the interference prohibited by this section be done “willfully,” and in subdivision (e) that the prohibited conduct be engaged in with “the specific intent to interfere.” As the term “willfully” appears to be subsumed within the requirement of specific intent, proposed Section 8130(a) would reference only the latter term to express the mental state required by the provision.

The Commission invites comment on whether this revision is appropriate.

(2) The second sentence of proposed Section 8130(e) provides that this section “does not obstruct the rights and normal activities of landowners or tenants.” If this language is intended to establish an exemption (as appears to be the case) should the sentence be revised to parallel the first sentence of subdivision (d), and provide that the section “does not apply” to the exempted conduct?

The Commission invites comment on this issue.

§ 8135. Signs

8135. It is unlawful to do any of the following:

(a) Post any sign indicating an area is a state or federal refuge unless established by state or federal law.

(b) Post any sign prohibiting trespass or hunting on any land unless authorized by the owner or the person in lawful possession of that land.

(c) Maliciously tear down, mutilate, or destroy any sign, signboard or other notice forbidding hunting or trespass on land.

Comment. Section 8135 continues former Fish and Game Code Section 2018 without substantive change.

§ 8140. Use of sodium cyanide

8140. (a) Notwithstanding Section 31605, subdivision (b) of Section 32150, Section 32155, 32305, 35215, 35610, 35710, or 36010 of this code, or Section 14063 of the Food and Agricultural Code, no person, including an employee of the federal, state, county, or municipal government, may poison or attempt to poison any animal by using sodium fluoroacetate, also known as Compound 1080, or sodium cyanide.

(b) Notwithstanding any other provision of this code, a violation of this section, or any rule or regulation adopted pursuant to this section, is punishable by a fine of not less than three hundred dollars (\$300) or more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. The Legislature may increase, but may not decrease, these penalties.

Comment. Subdivision (a) of Section 8140 continues former Fish and Game Code Section 3003.2 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 12005.5 applicable to former Fish and Game Code Section 3003.2 without substantive change.

Note. Existing Fish and Game Codes Sections 3003.2 and 12005.5 (which would be continued by proposed Section 8140) are initiative statutes, added to the Fish and Game Code in 1998 by Proposition 4, Section 1. Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be amended or repealed by the Legislature only when expressly permitted by the text of the initiative statute.

The only language in the text of Proposition 4 that addresses a subsequent legislative amendment or repeal of either code section is the last sentence of Section 12005.5, which provides, “The Legislature may increase, but may not decrease, these penalties.” However, courts have held that a legislative enactment will not be considered to amend an initiative statute for the purposes of Article 2, Section 10(c), unless the subsequent enactment “prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court*

(Pearson), 48 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010), Proposition 103 Enforcement Project v. Quackenbush, 64 Cal. App. 4th 1473, 1486; 76 Cal. Rptr. 2d 342 (1998).

Based on this authority, the office of Legislative Counsel has informally indicated its view that a repeal and recodification of an initiative statute in a single enactment (as would be proposed by the proposed law), would not be prohibited by Article 2, Section 10(c), unless the recodification substantively changed the meaning of the repealed initiative statute.

In this instance, the proposed revisions of Sections 3003.2 and 12005.5 are intended only to clarify the meaning of those provisions, without changing their substantive effect.

The Commission invites comment on whether the continuation of Sections 3003.2 and 12005.5 in proposed Section 8140 would substantively change the meaning of either of those provisions, or would violate Article 2, Section 10(c) of the California Constitution for any other reason.

§ 8145. Explosives

8145. It is unlawful to use explosives in waters of the state inhabited by fish, except in one of the following circumstances:

(a) Pursuant to a permit first obtained by the user from the department, consistent with terms and conditions set by the commission. The department's decision to grant or deny a permit may be appealed to the commission by any person.

(b) In an emergency, to remove an accidental obstruction to the flow of water.

Comment. Section 8145 restates former Fish and Game Code Section 5500 without substantive change.

Note. Proposed Section 8145 is intended to restate existing Fish and Game Code Section 5500 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

"5500. It is unlawful to use explosives in the waters of this state inhabited by fish, except under a permit first obtained by the user from the department consistent with terms and conditions set by the commission, or except in case of emergency, to remove an accidental obstruction to the flow of water. Any person may appeal the department's decision to grant or deny a permit to the commission."

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

CHAPTER 3. OBLIGATIONS

§ 8300. Possession of license

8300. Every person while engaged in taking a bird, mammal, fish, amphibian, or reptile shall have on his or her person, in his or her immediate possession, or where otherwise specifically required by law to be kept, any license, tag, stamp, or permit that is required in order to take the bird, mammal, fish, amphibian, or reptile. In the case of a person diving from a boat, the license or permit may be kept on the boat, or in the case of a person diving from shore, the license or permit may be kept within 500 yards of the shore.

Comment. Section 8300 continues former Fish and Game Code Section 1054.2 without substantive change.

1 **§ 8305. Display of license, take, and equipment**

2 8305. All licenses, tags, and the birds, mammals, fish, reptiles, or amphibians
3 taken or otherwise dealt with under this code, and any device or apparatus
4 designed to be and capable of being used to take any bird, mammal, fish, reptile,
5 or amphibian, shall be exhibited upon demand to any person authorized by the
6 department to enforce this code or any law relating to the protection and
7 conservation of birds, mammals, fish, reptiles, or amphibians.

8 **Comment.** Section 8305 continues former Fish and Game Code Section 2012 without
9 substantive change.

10 **TITLE 2. REMEDIES**

11 **CHAPTER 1. CRIMINAL PENALTIES**

12 **§ 8400. Knowing and intentional acts**

13 8400. (a) Unless a minimum punishment is otherwise provided, the punishment
14 for the knowing and intentional taking of a mammal, bird, or fish in excess of the
15 quantity permitted by other provisions of this code or regulations adopted pursuant
16 to this code, not in compliance with size or sex limitations in other provisions of
17 this code or regulations adopted pursuant to this code, or from which only external
18 body parts, including, but not limited to, antlers, horns, hides, feathers, or fins, are
19 removed for use in violation of this code or regulations adopted pursuant to this
20 code, shall be not less than two hundred fifty dollars (\$250) for a first violation,
21 and not less than five hundred dollars (\$500) and imprisonment in a county jail for
22 not less than 30 days for a second or subsequent violation. The court shall apply
23 not less than the minimum punishment as specified in this subdivision except in
24 those cases where the court determines that, as to the imprisonment sentence only,
25 the interests of justice would best be served by granting probation or suspending
26 the imposition or execution of the imprisonment sentence.

27 (b) If the court grants probation to any person punished under subdivision (a), in
28 addition to any other terms or conditions imposed by the court, the court may
29 impose as a condition of that probation that the person perform not more than 100
30 hours of community service in the county in which the violation occurred. To the
31 extent practicable, the service shall involve work relating to natural resources. The
32 service shall be performed during a time that does not interfere with the person's
33 school attendance or employment. If the court requires a person to perform
34 community service under this subdivision, that person shall also be required to
35 attend a hunter safety course as described in Section 10405. The person, and not
36 the court, shall be responsible for paying all fees and costs related to the course.

37 (c) Unless a greater punishment is otherwise provided, the punishment for a
38 violation of this code subject to subdivision (a) is a fine of not more than two
39 thousand dollars (\$2,000), imprisonment in a county jail for not more than one
40 year, or both the fine and imprisonment.

1 **Comment.** Subdivisions (a) and (b) of Section 8400 continue former Fish and Game Code
2 Section 12003.1 without substantive change.

3 Subdivision (c) continues former Fish and Game Code Section 12002(b)(7) without substantive
4 change.

5 CHAPTER 2. CIVIL LIABILITY

6 **§ 8450. Civil action to recover damages**

7 8450. (a) It is the policy of this state to conserve its natural resources and to
8 prevent the willful or negligent destruction of birds, mammals, fish, reptiles, or
9 amphibians.

10 (b) The state may recover damages in a civil action against any person or local
11 agency that unlawfully or negligently takes or destroys any bird, mammal, fish,
12 reptile, or amphibian protected by the laws of this state.

13 (c) The measure of damages is the amount that will compensate for all the
14 detriment proximately caused by the taking or destruction.

15 (d) An action to recover damages under this section shall be brought in the name
16 of the people of the state, in a court in the county in which the cause of action
17 arose. The State Water Resources Control Board shall be notified of, and may join
18 in, any action brought under this section when the activities alleged to have caused
19 the destruction of any bird, mammal, fish, reptile, or amphibian may involve either
20 the unlawful discharge of pollutants into the waters of the state or other violation
21 of Division 7 (commencing with Section 13000) of the Water Code.

22 (e) This section does not apply to any of the following:

23 (1) Persons or local agencies engaged in agricultural pest control.

24 (2) The destruction of fish in irrigation canals or works, or irrigation drainages.

25 (3) The lawful destruction of a bird or mammal killed while damaging crops.

26 (f) No damages may be recovered against a local agency pursuant to this section
27 if a civil or administrative penalty is assessed against the local agency for the same
28 detriment pursuant to Division 7 (commencing with Section 13000) of the Water
29 Code.

30 (g) Any recovery or settlement of money damages pursuant to this section,
31 including, but not limited to, civil penalties, arising out of any civil action filed
32 and maintained by the Attorney General in the enforcement of this section shall be
33 deposited by the department in the subaccounts of the Fish and Wildlife Pollution
34 Account in the Fish and Game Preservation Fund as specified in **Section 13011**.

35 (h) For purposes of this section, “local agency” includes any city, county, city
36 and county, district, public authority, or other political subdivision.

37 **Comment.** Subdivisions (a) through (f), and (h), of Section 8450 continue former Fish and
38 Game Code Section 2014 without substantive change.

39 Subdivision (g) combines and continues former Fish and Game Code Section 2014(f) and
40 12017(a)(1) without substantive change.

41 **Notes.** (1) Existing Section 2014(a) authorizes a civil action for unlawful or negligent taking
42 or destruction of a specified animal. However, subdivision (b), stating the measure of damages in

such an action, refers only to the detriment proximately caused by the *destruction* of the animal. Proposed Section 8450 would conform subdivision (b) to subdivision (a), to address scenarios in which an animal was wrongfully taken but not destroyed.

The Commission invites comment on whether this revision is appropriate.

(2) Existing Section 2014(d) reads as follows (with emphasis added):

“This section does not apply to persons or local agencies engaged in agricultural pest control, to the destruction of fish in irrigation canals or works or irrigation drainages, or to the destruction of birds or mammals killed while damaging crops *as provided by law*.”

The Commission has spent time researching the question of whether the phrase “as provided by law” that appears at the end of this subdivision was meant to apply to all three exceptions listed in the subdivision, or just the last listed exception. The Commission has preliminarily concluded, based on that research, that the phrase was intended to apply only to the last listed exception. Proposed Section 8450(e) would clarify that application.

The Commission invites comment on whether this revision of Section 2014(d) is appropriate.

(3) Existing Section 2014(e) (which would be continued by proposed Section 8450(f)) refers to “civil penalties” assessed against a local agency “pursuant to Division 7 (commencing with Section 13000) of the Water Code.” The term “civil penalty” can be understood to refer to both a civil penalty (as distinguished from a criminal penalty) assessed by a *court*, as well as administrative penalties assessed by an *administrative agency*. As sections in the referenced division of the Water Code provide for assessment of “civil penalties” imposed by both a court and by an administrative agency, the reference to “civil penalties” in proposed Section 8450(f) has been revised to refer to “civil or administrative penalty.”

The Commission invites comment on whether this revision is appropriate.

CHAPTER 3. LICENSE SUSPENSION

§ 8500. Suspension or revocation of license

8500. (a) In addition to any fine or other punishment imposed, a sport fishing or hunting license may, in the discretion of the court, be suspended or revoked upon the licensee’s conviction of a violation of any provision of this code or regulation adopted pursuant to this code, relating to hunting or fishing, for purposes other than profit.

(b) Any person who obtains another hunting or fishing license during the period his or her license has been suspended or revoked is guilty of a misdemeanor.

Comment. Section 8500 continues former Fish and Game Code Section 12158 without substantive change.

§ 8505. Suspension or revocation for specified offenses

8505. (a) Upon a conviction of a violation of this code or any regulation adopted pursuant thereto that is punishable pursuant to Section 8100, 8105, 8110, 31105, 33050, 33470, 34700, 35100, or 35955, the department may suspend or permanently revoke a person’s hunting or sport fishing license or permit privileges.

(b)(1) Any person whose privileges are suspended or revoked pursuant to this section may appeal the suspension or revocation to the commission. The commission shall initiate the appeal process within 12 months of the violator’s

1 appeal request. The commission shall consider at least the nature, circumstances,
2 extent, and gravity of the person's violations, the person's culpability for the
3 violations, and the injury to natural resources by the violations, and may restore a
4 person's hunting or sport fishing license or permit privileges.

5 (2) The department may adopt regulations to implement this subdivision.

6 (c) Pursuant to subdivision (c) of Section 8630, a judge may order the seizure or
7 forfeiture of any device or apparatus, including a vessel, vehicle, or hunting or
8 fishing gear, that is used in committing an offense punishable under Section 8100,
9 8105, 8110, 31105, 33050, 33470, 34700, 35100, or 35955.

10 **Comment.** Section 8505 continues former Fish and Game Code Section 12154 without
11 substantive change.

12 **§ 8510. Effect of termination of probation and dismissal of charges**

13 8510. A termination of probation and dismissal of charges pursuant to Section
14 1203.4 of the Penal Code or a dismissal of charges pursuant to Section 1203.4a of
15 the Penal Code does not affect either a past revocation or suspension of any
16 license or permit to take fish or wildlife, or the authority of the commission or a
17 court to revoke or suspend a license or permit to take fish or wildlife.

18 **Comment.** Section 8510 continues former Fish and Game Code Section 12166 without
19 substantive change.

20 **§ 8515. Procedures governing revocation or suspension**

21 8515. (a) The commission shall adopt regulations and procedures governing the
22 revocation or suspension of hunting or sport fishing privileges. The regulations
23 shall provide for notice and opportunity for a hearing.

24 (b) Any person, whose license was revoked pursuant to Section 8505, 9910, or
25 11240, may appeal to the commission for reissuance of the license and termination
26 of the prohibition against the taking of fish, reptiles, amphibians, or birds or
27 mammals.

28 (c) After a public hearing at which the person has appeared in person, the
29 commission may terminate the prohibition and authorize the issuance of a license
30 if it finds that there are sufficient mitigating circumstances to warrant that action.

31 (d) It is unlawful for a person whose hunting or sport fishing privileges have
32 been revoked or suspended to obtain or attempt to obtain, or to possess a hunting
33 or sport fishing license, permit, or tag during that suspension or revocation period.

34 (e) Any person who violates subdivision (d) is guilty of an infraction punishable
35 by a fine of not less than one hundred dollars (\$100) or more than one thousand
36 dollars (\$1,000), or of a misdemeanor.

37 **Comment.** Section 8515 continues former Fish and Game Code Section 12155.5 without
38 substantive change.

CHAPTER 4. SEIZURE AND FORFEITURE

§ 8600. Seizure of take

8600. (a) Any bird, mammal, fish, reptile, aquaculture animal or product, plant, amphibian, or any part thereof, that has been taken, possessed, sold, imported, or transported contrary to any of the laws of this state shall be seized by the department.

(b) In accordance with the commission's regulations, notice of seizure shall be given to the person who had possession of the bird, mammal, fish, reptile, aquaculture animal or product, plant, amphibian, or any part thereof, at the time of the seizure if that person is known.

Comment. Section 8600 continues former Fish and Game Code Section 12159 without substantive change.

§ 8605. Sale or donation of seized take

8605. Any seizure of any bird, mammal, fish, reptile, amphibian made under circumstances in which it cannot be determined who took, possessed, sold, imported, or transported the bird, mammal, fish, reptile, or amphibian contrary to law may be sold or donated to a state, county, city, city and county, or any charitable institution.

Comment. Section 8605 continues former Fish and Game Code Section 12162 without substantive change.

§ 8615. Reuse of seized take

8615. All birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians or any part thereof, seized in accordance with Section 8600, the sale of which is not prohibited and that have a current market value of one hundred dollars (\$100) or more, shall be packed, preserved, sold for bait, used for fish food in state-owned fish hatcheries, or otherwise put to economical use immediately upon seizure, at the prevailing market price for legal birds, mammals, fish, reptiles, aquaculture animals and products, plants, amphibians, or part thereof in effect on the date of seizure. Any proceeds thereof shall be placed in the Fish and Game Preservation Fund. If the person from whom the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians were seized is not convicted in a court of competent jurisdiction for the offense out of which the seizure arose, then and in that event the proceeds shall be returned to that person.

Comment. Section 8615 continues former Fish and Game Code Section 12160 without substantive change.

§ 8620. Donation or destruction of seized take

8620. The judge before whom any person is tried for taking, possessing, selling, importing, or transporting birds, mammals, fish, reptiles, aquaculture animals and products, plants, or amphibians, or parts thereof, contrary to the laws of this state

1 shall upon the conviction of the accused make an order forfeiting and disposing of
2 the birds, mammals, fish, reptiles, aquaculture animals and products, plants, or
3 amphibians, or parts thereof, in accordance with the provisions of Section 8615.
4 However, if the birds, mammals, fish, reptiles, aquaculture animals and products,
5 plants, or amphibians, or parts thereof, may not be sold lawfully or have a current
6 market value of less than one hundred dollars (\$100), the judge may at his or her
7 discretion order that the birds, mammals, fish, reptiles, aquaculture animals or
8 products, plants, amphibians, or parts thereof, be donated to a state, county, city,
9 or any charitable institution, or be destroyed.

10 **Comment.** Section 8620 continues former Fish and Game Code Section 12161 without
11 substantive change.

12 **§ 8625. Purchase of seized take**

13 8625. Any person who purchases a bird, mammal, fish, reptile, or amphibian
14 from the department pursuant to Sections 8605 or 8615 shall, upon delivery, pay
15 to the department, for deposit in the Fish and Game Preservation Fund, the
16 prevailing market price for a legal bird, mammal, fish, reptile, or amphibian in
17 effect on the date of seizure.

18 **Comment.** Section 8625 continues former Fish and Game Code Section 12163 without
19 substantive change.

20 **§ 8630. Forfeiture of device or apparatus**

21 8630. (a) Except as provided in subdivision (b), the judge before whom any
22 person is tried for a violation of any provision of this code, or regulation adopted
23 pursuant to this code, may, upon the conviction of the person tried, order the
24 forfeiture of any device or apparatus that is designed to be, or is capable of being,
25 used to take birds, mammals, fish, reptiles, or amphibians and that was used in
26 committing the offense charged.

27 (b) The judge shall, if the offense is punishable under **Chapter 1.5**
28 **(commencing with Section 2050) of Division 3**, or under Section 30200, 32700,
29 38200, 52200, or 53000, of this code, or under subdivision (c) of Section 597 of
30 the Penal Code, order the forfeiture of any device or apparatus that is used in
31 committing the offense, including, but not limited to, any vehicle that is used or
32 intended for use in delivering, importing, or exporting any unlawfully taken,
33 imported, or purchased species.

34 (c)(1) The judge may, for conviction of a violation of any of the following
35 offenses, order forfeiture of any device or apparatus that is used in committing the
36 offense, including, but not limited to, any vehicle used or intended for use in
37 committing the offense:

38 (A) Section 8000 relating to deer, elk, antelope, feral pigs, European wild boars,
39 black bears, and brown or cinnamon bears.

40 (B) Any offense that involves the sale, purchase, or possession of abalone for
41 commercial purposes.

1 (C) Any offense that involves the sale, purchase, or possession of sturgeon or
2 lobster, pursuant to Section 43150 or 49500.

3 (D) Any offense that involves a violation of Section 8100.

4 (E) A violation of subdivision (b) of Section 8105.

5 (2) In considering an order of forfeiture under this subdivision, the court shall
6 take into consideration the nature, circumstances, extent, and gravity of the
7 prohibited act committed, the degree of culpability of the violator, the property
8 proposed for forfeiture, and other criminal, civil, or administrative penalties
9 imposed on the violator under other provisions of law for that offense. The court
10 shall impose lesser forfeiture penalties under this subdivision for those acts that
11 have little significant effect upon natural resources or the property of another and
12 greater forfeiture penalties for those acts that may cause serious injury to natural
13 resources or the property of another, as determined by the court. In determining
14 whether or not to order forfeiture of a vehicle, the court shall, in addition to any
15 other relevant factor, consider whether the defendant is the owner of the vehicle
16 and whether the owner of the vehicle had knowledge of the violation.

17 (3) It is the intent of the Legislature that forfeiture not be ordered pursuant to
18 this subdivision for minor or inadvertent violations, as determined by the court.

19 (d) A judge shall not order the forfeiture of a vehicle under this section if there is
20 a community property interest in the vehicle that is owned by a person other than
21 the defendant and the vehicle is the only vehicle available to the defendant's
22 immediate family that may be operated on the highway with a class A, class B, or
23 class C driver's license.

24 (e) Any device or apparatus ordered forfeited shall be sold, used, or destroyed
25 by the department.

26 (f)(1) The proceeds from all sales under this section, after payment of any valid
27 liens on the forfeited property, shall be paid into the Fish and Game Preservation
28 Fund.

29 (2) A lien in which the lienholder is a conspirator is not a valid lien for purposes
30 of this subdivision.

31 (g) The provisions in this section authorizing or requiring a judge to order the
32 forfeiture of a device or apparatus also apply to the judge, referee, or juvenile
33 hearing officer in a juvenile court action brought under Section 258 of the Welfare
34 and Institutions Code.

35 (h) For purposes of this section, a plea of nolo contendere or no contest, or
36 forfeiture of bail, constitutes a conviction.

37 (i) Neither the disposition of the criminal action other than by conviction nor the
38 discretionary refusal of the judge to order forfeiture upon conviction impairs the
39 right of the department to commence proceedings to order the forfeiture of fish
40 nets or traps pursuant to Section 15420 or 19425.

41 **Comment.** Section 8630 continues former Fish and Game Code Section 12157 without
42 substantive change.

Note. Existing Fish and Game Code Section 12157 (which would be continued by proposed Section 8630) authorizes the sale of a forfeited device or apparatus (which may include a vehicle), with the proceeds first applied to satisfy any liens on the device or apparatus. However, a lien held by a “conspirator” is not subject to that rule. The meaning of the term “conspirator” in this context is unclear. This ambiguity could be problematic in at least two ways: (a) If a person can be deemed a “conspirator” without having been convicted of a crime, there could be a taking without due process of law. (b) If the section requires a conviction of the separate crime of conspiracy, then it may not apply in cases where the lien holder is convicted of the offenses referenced in the section.

The Commission invites comment on how this aspect of this provision is understood and applied in practice.

§ 8635. Forfeiture of vehicle

8635. The judge before whom any person is convicted of violating Sections 8120 and 9580 and, at the same proceeding, is also convicted of violating Section 8015 or 8125 may, in the court’s discretion, order the forfeiture of any motor vehicle or snowmobile used in committing one or more of the offenses charged. Any vehicle so forfeited shall be sold or destroyed by the department. The proceeds from the sale of a forfeited vehicle shall be paid into the Fish and Game Preservation Fund, except that any valid lien on the forfeited property shall first be paid from proceeds of the sale unless the lienholder is a conspirator. For purposes of this section, forfeiture of bail or a plea of nolo contendere shall constitute a conviction.

Comment. Section 8635 continues former Fish and Game Code Section 12157.5 without substantive change.

Notes. (1) Existing Fish and Game Code Section 12157.5 (which would be continued by proposed Section 8635) authorizes the sale of a forfeited vehicle, with the proceeds first applied to satisfy any liens on the vehicle. However, a lien held by a “conspirator” is not subject to that rule. The meaning of the term “conspirator” in this context is unclear. This ambiguity could be problematic in at least two ways: (a) If a person can be deemed a “conspirator” without having been convicted of a crime, there could be a taking without due process of law. (b) If the section requires a conviction of the separate crime of conspiracy, then it may not apply in cases where the lien holder is convicted of the offenses referenced in the section.

The Commission invites comment on how this aspect of this provision is understood and applied in practice.

(2) The first sentence of existing Section 12157.5 conditions the discretionary forfeiture authorized by the section on a person being “tried and convicted” of several distinct offenses. However, the last sentence of the section provides that, for purposes of the section a forfeiture of bail or plea of nolo contendere “shall constitute a conviction.”

This last sentence clearly suggests that the reference to a person having been “tried” and convicted for specified offenses was not meant to require that a trial in fact have been conducted. To avoid confusion on this issue, proposed Section 8635 would revise the reference in the first sentence of the section to a person having been “tried and convicted” to instead refer only to a person having been “convicted.”

The Commission invites comment on whether this revision accurately continues the intended meaning of the provision.

TITLE 3. SPECIAL SEASONS AND LIMITS

§ 8700. Fire seasons

8700. Whenever, because of extreme fire hazard, an area is closed to entry by the public by an order or proclamation issued or concurred in by the Governor, the commission may establish a season for hunting or fishing within the area. The season shall begin on or after the end of the closure, and correspond in length of time as nearly as possible to the amount of time the area was closed to hunting or fishing.

Comment. Section 8700 continues former Fish and Game Code Section 306 without substantive change.

§ 8705. Reduced limits based on scarcity

8705. (a) Whenever after due investigation the commission finds that game fish, resident game birds, migratory game birds, game mammals, fur-bearing mammals, game amphibians, or game reptiles have decreased in numbers in any area, district, or part of an area or district to the extent that a scarcity exists, the commission may reduce the daily bag limit and the possession limit on those fish, birds, mammals, amphibians, or reptiles that are in danger of depletion, for a period of time that the commission may specify, or until new legislation addressing the scarcity becomes operative.

(b) A regulation adopted pursuant to this section shall be filed with the Secretary of State, and that filing shall be deemed a legal notice thereof.

(c) The regulation shall be published twice in at least one newspaper of general circulation in every county affected by the order. The publications shall be separated by a period of not less than one week and not more than two weeks. The regulation shall be posted in any public places in each county that the director may direct.

Comment. Section 8705 restates former Fish and Game Code Section 307 to make clear that it applies to “game” animals of the specified types.

Notes. (1) Proposed Section 8705 would continue existing Fish and Game Code Section 307 with minor revisions. The revisions would make clear that the section applies to “game” animals of the specified types (rather than all animals of those types). See also proposed Sections 445, 455, and 465 (“game amphibian,” “game fish,” and “game reptile” defined).

The Commission invites comment on the merits of those revisions.

(2) A provision of existing Section 307, continued in proposed Section 8705(b), requires that a regulation be filed with the Secretary of State. That requirement appears to be redundant. Existing Section 300 generally requires that “any regulation issued under any subsequent provisions of this code shall be filed with the Secretary of State, as required by Chapter 4 (commencing with Section 11370), Part 1, Division 3, Title 2, of the Government Code.”

The Commission invites comment on whether the filing requirement in Section 8705(b) can be deleted.

(3) Proposed Section 8705 also provides that the filing of the regulation with the Secretary of State “shall be deemed a legal notice thereof.” The Commission is not certain of the meaning of that provision. Moreover, the Commission is concerned that this statement could create a problematic negative inference that other regulations filed with the Secretary of State do not

create “legal notice” of the regulation. See also, Gov’t Code § 11343.6 (filing regulation with Secretary of State creates rebuttable presumption of regulation’s proper promulgation; courts shall take judicial notice of filed regulation); 11344.6 (publication of regulation in California Regulatory Notice Register creates rebuttable presumption of regulation’s proper promulgation; courts shall take judicial notice of filed regulation).

The Commission invites comment on whether the “legal notice” clause of Section 8705(b) should be deleted.

§ 8710. Prohibited take in protected areas

8710. (a) The commission at any time may close to the taking of any species or subspecies of bird or mammal any area newly stocked by the department with resident or migratory game birds or game or fur-bearing mammals, or any area where, in the judgment of the commission, added protection for birds or mammals is needed to properly conserve the birds or mammals, for such time as the commission may designate, or until such time as new legislation thereon enacted by the Legislature may become effective.

(b) The commission may at any time close any stream, lake, or other inland waters, or portions thereof, to the taking of any species or subspecies of fish to protect and properly conserve the fish, except for the taking of fish otherwise permitted by this code under a commercial fishing license, for such time as the commission may designate, or until such time as new legislation thereon enacted by the Legislature may become effective.

Comment. Subdivision (a) of Section 8710 continues former Fish and Game Code Section 314 without change.

Subdivision (b) continues former Fish and Game Code Section 315 without change.

§ 8715. Opening identified waters to take

8715. The commission may, at any time when facts are presented to the commission that were not presented to the commission at the time of a meeting held pursuant to Section 1105, open any stream, lake, or other inland waters, or portions thereof to the taking of any species or subspecies of fish for the proper utilization of the fish, for such time as the commission may designate, or until such time as new legislation thereon enacted by the Legislature may become effective.

Comment. Section 8715 continues former Fish and Game Code Section 315.3 without substantive change.

Note. Existing Fish and Game Code Section 315.3 (which would be continued by proposed Section 8715) references a Fish and Game Commission meeting held in December, pursuant to “Section 209.” However, former Fish and Game Code Section 209, which provided for such December meetings, was repealed in 2006, and replaced by Fish and Game Code 206, which did not limit either the dates or subject matter of Commission meetings. See 2006 Cal. Stat. ch. 667. In 2016, Section 206 was in turn repealed and replaced by Section 255. See 2016 Cal. Stat. ch. 546. Existing Section 255 would in turn be continued in the proposed law by proposed Section 1105.

The Commission invites comment on the substitution of proposed Section 1105 as a cross-reference in this provision, in place of the existing reference to “Section 209.”

1 **§ 8720. Restricted take in Fish and Wildlife District 2655**

2 8720. (a) Notwithstanding any other provisions of this code, in District 2655 the
3 taking of birds, mammals, fish, amphibians, or reptiles shall be subject to
4 regulations adopted, from time to time, by the commission, except that it is
5 unlawful to take birds or mammals within one-eighth mile of any gallinaceous
6 guzzler, if the area surrounding it is posted in the manner prescribed by the
7 commission. In the Colorado River, in District 2655, the commission may adopt
8 regulations in agreement with the proper authorities of the State of Arizona.

9 **Comment.** Section 8720 continues former Fish and Game Code Section 308 without
10 substantive change.

11 **Notes.** (1) Is the prohibition in existing Section 308 against the take of birds or mammals
12 within one-eighth mile of any gallinaceous guzzler, if the area surrounding the guzzler is posted
13 in the manner prescribed by the commission (which would be continued by proposed Section
14 8720(b)) intended to apply only in existing District 22?

15 **The Commission invites comment on this question.**

16 (2) Should that prohibition against take around a gallinaceous guzzler also be made applicable
17 to the take of animals others than birds and mammals?

18 **The Commission invites comment on this question.**

19 **TITLE 4. HUNTING AND FISHING GUIDES**

20 **CHAPTER 1. GUIDES GENERALLY**

21 **§ 8800. “Guide” defined**

22 8800. As used in this chapter, “guide” means any person who is engaged in the
23 business of packing or guiding, or who, for a fee, assists another person in taking
24 or attempting to take any bird, mammal, fish, amphibian, or reptile. “Guide” also
25 includes any person who, for profit, transports other persons, their equipment, or
26 both to or from a hunting or fishing area.

27 **Comment.** Section 8800 continues former Fish and Game Code Section 2535 without change.

28 **§ 8805. Guide license required**

29 8805. (a) It is unlawful for any person to engage in the business of guiding or
30 packing, or to act as a guide for any consideration or compensation, without first
31 having secured a guide license from the department.

32 (b) An employee of a licensee who acts as a guide only in connection with, and
33 within the scope of, his or her employment is exempt from the requirement of
34 subdivision (a) if all of the following conditions are met:

35 (1) The employment is subject to and the person is reported to the carrier of the
36 employer’s workers’ compensation insurance.

37 (2) The person is subject to and reported to the state and federal taxing
38 authorities for withholding of income tax.

(3) The person is reported to the department, on forms provided by the department, as an employee of the guide prior to any contact with any person being guided, and a registration fee has been paid. The base fee for an employee guide registration for the 2004 license year shall be thirty-three dollars (\$33), which shall be adjusted annually thereafter pursuant to Section 3755.

(c) A person who is licensed in another state to provide guide services for the purposes of fishing is exempt from the requirements of subdivision (a) if all of the following conditions are met:

(1) The state in which the person is licensed grants a similar exemption to licensed guides who are residents of this state.

(2) Evidence of a valid guide license is provided to the department upon request.

(3) The person is engaged in the business of guiding only in conjunction with and during the term of a multistate fishing tournament approved by the appropriate agency in each of the affected states.

(4) The tournament sponsor provides to the department any information or documents necessary to administer and enforce this paragraph, as determined by the department, including, but not limited to, the identities of all guides participating in the tournament, verification of another state's license exemption, and information sufficient to determine the validity of another state's guide licenses.

(5) The tournament sponsor pays the department an amount, determined by the department, to be sufficient to cover the department's cost to administer and enforce this subdivision.

(6) The net proceeds of the tournament are used for resource management projects or habitat improvement projects, or both.

(d) The commission shall adjust the amount of the fees specified in paragraph (3) of subdivision (b), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

Comment. Section 8805 continues former Fish and Game Code Section 2536 without substantive change.

§ 8810. Exception

8810. A person operating under a commercial passenger fishing boat license issued pursuant to Section 21905 is not required to obtain a guide license.

Comment. Section 8810 continues former Fish and Game Code Section 2537 without substantive change.

§ 8815. Grazing permit required

8815. If the licensee operates with pack or riding animals in any area in which a grazing permit is required, the license is not valid unless the licensee has a valid grazing permit for the area. A licensee shall not guide clients on any land under the jurisdiction of the United States Department of the Interior or Department of

1 Agriculture where a permit is required without first obtaining the permit from that
2 federal agency.

3 **Comment.** Section 8815 continues former Fish and Game Code Section 2539 without
4 substantive change.

5 **§ 8820. Regulations**

6 8820. The commission shall adopt regulations governing the conduct and
7 qualifications of guides to ensure the safety and welfare of persons engaging the
8 services of a guide, and may adopt regulations governing the procedures for
9 applications for guide licenses. The qualifications shall include, but not be limited
10 to, knowledge of basic first aid and rescue operations.

11 **Comment.** Section 8820 continues former Fish and Game Code Section 2542 without change.

12 **§ 8825. Records**

13 8825. The commission may require licensed guides to maintain and submit
14 records of their operations. The records may be examined at any time by
15 representatives of the department. It is unlawful for any licensed guide to fail to
16 maintain or submit any required record or to refuse to allow the examination of a
17 record on request of a department representative.

18 **Comment.** Section 8825 continues former Fish and Game Code Section 2543 without
19 substantive change.

20 CHAPTER 2. LICENSE APPLICATION

21 **§ 8900. Information required**

22 8900. An application for a guide license shall be on a form furnished by the
23 department on request. The application shall show all of the following:

24 (a) The name, date of birth, physical description, age, address, and telephone
25 number, if any, of the applicant.

26 (b) The area or areas of the state in which the applicant proposes to operate.

27 (c) The type of guiding or packing in which the applicant proposes to engage.

28 (d) The experience that qualifies the applicant for the type of guiding or packing
29 he or she proposes to conduct.

30 (e) The type and amount of the equipment, vehicles, animals, and other property
31 the applicant proposes to use in his or her operations.

32 (f) Any other information that the department or the commission may require.

33 **Comment.** Section 8900 continues former Fish and Game Code Section 2538 without
34 substantive change.

35 **§ 8905. License fee**

36 8905. (a) The base fee for a guide license issued to a resident is one hundred
37 fifty dollars (\$150).

(b) The base fee for a guide license issued to a nonresident is three hundred fifty dollars (\$350).

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 3755.

(d) The commission shall adjust the amount of the fees specified in this section, as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

Comment. Section 8905 continues former Fish and Game Code Section 2540(a), (b), (d), and (e) without substantive change.

§ 8910. License duration

8910. A guide license is valid for the license year beginning on February 1 and ending on January 31 of the succeeding year or, if issued after the beginning of the license year, for the remainder of that license year.

Comment. Section 8910 continues former Fish and Game Code Section 2540(c) without change.

§ 8915. Surety bond

8915. Each applicant for a guide license shall submit proof of having obtained a surety bond in the amount of not less than one thousand dollars (\$1,000), conditioned on faithful performance of the guide and the guide's agents or employees in fulfilling their responsibilities to their clients. No guide license shall be issued to any applicant who does not submit proof of having a bond that is valid for the term of the license.

Comment. Section 8915 continues former Fish and Game Code Section 2541 without substantive change.

Note. The language used in existing Section 2541 to describe the purpose of the surety bond referenced in the section is non-standard. Proposed Section 8915 would conform the language to that used in more recently enacted provisions. See e.g., Fin. Code § 12104(g), Health and Safety Code § 1376(b), Rev. & Tax. Code § 30165.1(b)(4)(B).

The Commission invites comment on whether this revision is appropriate.

§ 8920. Grounds for refusal of license

8920. The department may refuse to issue a guide license to an applicant upon a showing of any of the following:

(a) The applicant has failed to fulfill his responsibilities to a client.

(b) The applicant has violated this code or any regulation adopted pursuant to this code, or has knowingly permitted a client or another member of a party being guided to violate this code or any regulation adopted pursuant to this code, and the applicant had the authority and means to prevent the violation.

Comment. Section 8920 continues former Fish and Game Code Section 2544 without substantive change.

1 **§ 8925. Appeal of refusal**

2 8925. An applicant denied a guide license by the department may request a
3 hearing before the commission and the commission shall determine whether or not
4 the license shall be issued.

5 **Comment.** Section 8925 continues former Fish and Game Code Section 2545 without change.

6 CHAPTER 3. LICENSE REVOCATION

7 **§ 9000. Commission revocation of guide license**

8 9000. The commission may revoke a guide license or the privilege to guide upon
9 a showing of any of the following:

10 (a) The licensee has been convicted of a violation of this code or any regulation
11 adopted pursuant to this code.

12 (b) The licensee has knowingly permitted a client or other member of the party
13 being guided to violate this code or any regulation adopted pursuant to this code,
14 and that the licensee had the authority and means to prevent the violation.

15 (c) The licensee has failed to fulfill his or her responsibilities to a client.

16 **Comment.** Section 9000 continues former Fish and Game Code Section 2546 without
17 substantive change.

18 **§ 9005. Court revocation of guide license**

19 9005. (a) When any person licensed as a guide under Section 8805 is found
20 guilty by a court of competent jurisdiction of violating or permitting the violation
21 of any provision of this code or regulation adopted pursuant to this code, the court,
22 in addition to any fine or other punishment imposed, may revoke the person's
23 guide license.

24 (b) Any person who obtains another guide license within two years after a guide
25 license issued to that person has been revoked or forfeited is guilty of a
26 misdemeanor.

27 **Comment.** Section 9005 continues former Fish and Game Code Section 12165 without
28 substantive change.

29 **§ 9010. Court revocation of privilege to hunt, fish, or guide**

30 9010. (a) The judge before whom any guide, as defined in Section 8800, is
31 arraigned for a violation of this code, or regulation adopted pursuant to this code,
32 may, upon the conviction of the person, order the revocation of the person's
33 privilege to hunt, fish, or guide for a period not to exceed three years from the date
34 of the conviction.

35 (b) For purposes of this section, a plea of nolo contendere or no contest or a
36 forfeiture of bail is a conviction.

37 (c) It shall be unlawful for any person to obtain, or attempt to obtain a guide
38 license, sportfishing license, or hunting license during a period of revocation
39 imposed under this section.

(d) Neither the disposition of the criminal action other than by conviction nor the discretionary refusal of the judge to order revocation upon conviction impairs the right of the department to commence proceedings to order revocation of the guide license pursuant to Section 9000.

Comment. Section 9010 continues former Fish and Game Code Section 12156.5 without substantive change.

TITLE 5. SPECIAL LICENSES

CHAPTER 1. LIFETIME LICENSES

§ 9100. Issuance of lifetime licenses

9100. (a) In addition to Section 10210, 10230, 13100, or 13105 and notwithstanding Section 10220, the department shall issue a lifetime sport fishing and hunting license pursuant to this section. A lifetime sport fishing and hunting license authorizes the taking of birds, mammals, fish, reptiles, or amphibians anywhere in this state in accordance with law, for purposes other than profit, for the life of the licensee, unless revoked for a violation of this code or a regulation adopted pursuant to this code. A lifetime sport fishing and hunting license is not transferable. A lifetime sport fishing and hunting license does not include any special tags, stamps, or other entitlements.

(b) A lifetime sport fishing and hunting license may be issued to a resident, as follows:

(1) To a person 62 years of age or over, upon payment of a base fee of seven hundred thirty dollars (\$730).

(2) To a person 40 years of age or over and less than 62 years of age, upon payment of a base fee of one thousand eighty dollars (\$1,080).

(3) To a person 10 years of age or over and less than 40 years of age, upon payment of a base fee of one thousand two hundred dollars (\$1,200).

(4) To a person less than 10 years of age, upon payment of a base fee of seven hundred thirty dollars (\$730).

(c) This section does not require a person less than 16 years of age to obtain a license to take fish, reptiles, or amphibians for purposes other than profit or to obtain a license to take birds or mammals, except as required by law.

(d) This section does not exempt an applicant for a license from meeting other qualifications or requirements otherwise established by law for the privilege of sport hunting or sport fishing.

(e) Upon payment of a base fee of four hundred forty-five dollars (\$445), a person holding a lifetime hunting license or lifetime sport fishing and hunting license shall be issued annually one deer tag application pursuant to subdivision (a) of Section 34225, and five wild pig tags issued pursuant to Section 37205. Lifetime privileges issued pursuant to this subdivision are not transferable.

(f) Upon payment of a base fee of two hundred ten dollars (\$210), a person holding a lifetime hunting license or a lifetime sport fishing and hunting license shall be entitled annually to the privileges afforded to a person holding a state duck validation issued pursuant to Section 30515, and an upland game bird validation issued pursuant to Section 29505. Lifetime privileges issued pursuant to this subdivision are not transferable.

(g) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 3755.

(h) The commission shall adjust the amount of the fees specified in subdivision (g) as necessary, to fully recover, but not exceed, all reasonable administrative implementation costs of the department and the commission relating to those licenses.

(i) For purposes of this section, “person” includes any individual, firm, association, organization, partnership, business, trust, corporation, limited liability company, company, district, city, county, city and county, town, the state, and any of the agencies of those entities.

Comment. Subdivisions (a) through (h) of Section 9100 continue former Fish and Game Code Section 714 without substantive change. The references in subdivision (f) of Section 714 to a state duck “stamp” issued pursuant to former Fish and Game Code Section 3700.1, and an upland game bird “stamp” issued pursuant to former Fish and Game Code Section 3682.1, are deleted, as those provisions authorized only the issuance of validations, and not stamps.

Subdivision (i) of Section 9100 continues former Fish and Game Code Section 711.2(b) without substantive change.

Note. Subdivision (i) of proposed Section 9100 is added to existing Fish and Game Code Section 714, to preserve the special definition of the word “persons” applicable to the existing section. See existing Section 711.2(b) (“For purposes of [the article containing Section 714], “person” includes any individual, *firm*, association, *organization*, partnership, *business*, trust, corporation, limited liability company, *company*, *district*, *city*, *county*, *city and county*, *town*, *the state*, and *any of the agencies of those entities*.”) (emphasis added); cf. existing Section 67 (unless otherwise provided, “person” means “any natural person or any partnership, corporation, limited liability company, trust, or other type of association.”)

The Commission invites comment on whether the special definition of the term “person” in existing Section 711.2(b), which includes several described entities not included in the otherwise generally definition of the term, should be made expressly applicable to proposed Section 9100.

§ 9105. Deposit of fees from lifetime licenses

9105. (a) Notwithstanding Section 3600, the fees collected from lifetime sport fishing and hunting licenses and privileges issued pursuant to Section 9100, lifetime hunting licenses and privileges issued pursuant to Section 10225, and lifetime sport fishing licenses and privileges issued pursuant to Section 13105 shall be deposited as follows:

(1) Twenty dollars (\$20) from the initial issuance of each lifetime license shall be deposited in the Fish and Game Preservation Fund for use in accordance with Section 3465.

(2) The balance of the fees collected shall be deposited in the Lifetime License Trust Account that is hereby created in the Fish and Game Preservation Fund. Except as provided in this section, that principal amount of the money in the account from the fee for a lifetime license shall not be used, except for investment.

(b) The money in the Lifetime License Trust Account may be transferred and invested through the Surplus Money Investment Fund and all interest shall accrue to the account pursuant to subdivision (g) of Section 16475 of the Government Code.

(c) Upon issuance of a lifetime license or lifetime privilege issued pursuant to Section 9100, 10225, or 13105, the department shall transfer the following amounts from the Lifetime License Trust Account to the Fish and Game Preservation Fund:

(1) Twenty-nine dollars and twenty-five cents (\$29.25) for an annual resident hunting license or an annual resident sport fishing license.

(2) Seven dollars and twenty-five cents (\$7.25) for a junior hunting license.

(3) Nine dollars and twenty-five cents (\$9.25) for one second-rod validation issued pursuant to Section 13250.

(4) Two dollars and fifty cents (\$2.50) for one sport fishing ocean enhancement validation issued pursuant to Section 12910.

(5) Three dollars and seventy-five cents (\$3.75) for one steelhead trout catch report-restoration card issued pursuant to Section 44000.

(6) One dollar (\$1) for one salmon punchcard issued pursuant to regulations adopted by the commission.

(7) Nineteen dollars and twenty-five cents (\$19.25) for a deer tag application issued pursuant to subdivision (a) of Section 34225.

(8) Eight dollars and seventy-five cents (\$8.75) for five wild pig tags issued pursuant to Section 37205.

(9) Ten dollars (\$10) for one state duck validation issued pursuant to Section 30515.

(10) Six dollars and twenty-five cents (\$6.25) for one upland game bird validation issued pursuant to Section 29505.

Comment. Section 9105 continues former Fish and Game Code Section 13005 without substantive change. The references in paragraphs (c)(3) and (c)(4), respectively, to a second-rod “stamp” issued pursuant to former Fish and Game Code Section 7149.45, and a sport fishing ocean enhancement “stamp” issued pursuant to paragraph (a) of former Fish and Game Code Section 6596.1, are deleted, as those provisions authorized only the issuance of validations, and not stamps.

The references in paragraphs (c)(9) and (c)(10), respectively, to a state duck “stamp” issued pursuant to former Fish and Game Code Section 3700.1, and an upland game bird “stamp” issued pursuant to former Fish and Game Code Section 3682.1, are also deleted, as those provisions also authorized only the issuance of validations, and not stamps.

CHAPTER 2. SURVIVAL SCHOOL

§ 9150. Survival School

9150. (a) The commission may issue a permit authorizing a member of the armed forces of the United States or a student or faculty member of an elementary or secondary school in the public school system actually assigned to, and participating in, an organized survival training course, to take fish, amphibians, reptiles, birds, or mammals, except rare or endangered species, notwithstanding any other law or regulation, pursuant to the terms and conditions of that permit. A permit involving training by the armed forces of the United States shall be issued to the commanding officer of the unit having jurisdiction over the conduct of the survival training course. A permit involving training by an elementary or secondary school in the public school system shall be issued to the governing board or superintendent of the district having jurisdiction over that school and the conduct of the survival training course. A permit shall be applicable only to the area established for that survival training as designated by the commission in the permit and for the species and numbers designated in the permit.

(b) The commission may revise a condition of a permit if it finds revision is necessary to properly protect the fish, amphibians, reptiles, birds, or mammals in the area.

(c) The term of a permit issued pursuant to subdivision (a) shall be for not more than a calendar year.

(d) A report shall be submitted on the expiration of the permit period specified pursuant to subdivision (c), or as otherwise required by the commission, of all fish, amphibians, reptiles, birds, or mammals taken during the period covered by the report in each permit area. A new permit shall not be issued until the report has been submitted, and an existing permit may be canceled if a report is not submitted when required by the commission.

(e) A person engaged in survival training taking a fish, amphibian, reptile, bird, or mammal pursuant to a permit issued under this section shall not use a firearm, bow and arrow, steel trap, explosive, chemical, poison, drug, net, or fish tackle, except that hooks, handlines, and improvised poles and lines may be used to take fish.

Comment. Section 9150 continues former Fish and Game Code Section 312 without change.

CHAPTER 3. SCIENTIFIC RESEARCH

§ 9200. Permit for scientific, educational, or propagation take or possession

9200. (a) The department may issue permits, subject to restrictions and regulations that the department determines are desirable, to take or possess, in any part of the state, for scientific, educational, or propagation purposes, mammals, birds and the nests and eggs thereof, fish, amphibians, reptiles, or any other form of plant or animal life.

1 (b) The department may issue a permit that is valid for 36 months from the date
2 of issuance on the payment of a nonrefundable application fee of one hundred
3 dollars (\$100) and a permit fee of three hundred dollars (\$300), as adjusted under
4 Section 3755.

5 (c) Notwithstanding subdivision (b), the department may issue a permit without
6 fee that is valid for 12 months from the date of issuance to authorize only the
7 banding of birds and the exhibition of live or dead wildlife specimens by public
8 zoological gardens, scientific, or educational institutions.

9 (d)(1) The department may issue a special student permit that is valid for 12
10 months from the date of issuance on the payment of a nonrefundable application
11 fee of twenty-five dollars (\$25) and a permit fee of fifty dollars (\$50), as adjusted
12 under Section 3755, to any student in a school of collegiate level or a commercial
13 fishing class who is required by an instructor to collect specimens used in
14 laboratory work in the school under supervision and in connection with a course in
15 wildlife research or in the conduct of wildlife investigations and studies on behalf
16 of the public.

17 (2) All fish taken under permit for a commercial fishing class student shall be
18 taken in accordance with state law, except that subdivisions (a), (b), (c), and
19 paragraph (1) of subdivision (d) of Section 14500, and Sections 14615, 14750,
20 14755, 14765, 14775, 14780, 14785, and 14790 do not apply. All fish taken under
21 a permit for a commercial fishing class student may be sold only to a person
22 licensed to receive fish from commercial fishermen as provided in Section 20205,
23 20450, or 20460, or donated to a charitable institution. All funds received from the
24 sale of the fish shall be used solely for the support of commercial fishing classes.

25 (e) It is not necessary for the holder of the permit to have a sport fishing or
26 hunting license to collect any fish, amphibian, reptile, aquatic animal or plant,
27 bird, or mammal for scientific, educational, or propagation purposes in this state.

28 (f) Nothing in this section authorizes any act that violates Section 597 of the
29 Penal Code.

30 (g) A permit under this section does not authorize the taking of fish or mammals
31 from the ocean waters of the state that are within the boundaries of any city if the
32 city has filed with the department an objection to the taking.

33 (h) The adjustment of the nonrefundable application fee and permit fees
34 pursuant to Section 3755 that are specified in subdivisions (b) and (d) shall be
35 applicable to permits issued on or after January 1, 2013.

36 (i) The department, by regulation, may adjust the amount of the fees specified in
37 subdivisions (b) and (d) as necessary to fully recover, but not exceed, all
38 reasonable administrative and implementation costs of the department relating to
39 those permits.

40 (j) No permit under this section is required for species listed as threatened or
41 endangered pursuant to the California Endangered Species Act, when an entity
42 holds a valid permit or memorandum of understanding for the subject species and
43 the proposed activities, issued pursuant to **Section 2081**.

1 (k) No permit under this section is required for fully protected species listed in
2 Section 415, 420, 425, 430, or 440, if the entity holds a valid memorandum of
3 understanding issued by the department for the subject species and proposed
4 activities, in accordance with the respective section.

5 (l) A permit or amendment issued pursuant to this section is not transferable
6 between individuals or entities.

7 (m) If a permit holder fails to submit information or reports required in a permit,
8 the department shall revoke an existing permit, and may decline to issue a permit
9 to that person or entity in subsequent years.

10 **Comment.** Section 9200 continues former Fish and Game Code Section 1002 without
11 substantive change.

12 **§ 9205. Issuance of permit to public, private, or nonprofit entity**

13 9205. (a) The department may issue a permit pursuant to Section 9200 to an
14 appropriate public, private, or nonprofit entity, or a person, as determined by the
15 department, in the name of a principal scientific investigator or the permitted
16 entity or person.

17 (b) The department may approve individual temporary employees or volunteers
18 to work under the permit, after receiving notification from the permittee. The
19 permittee shall have adequate supervision over any temporary employees or
20 volunteers approved to work under the permit.

21 (c) A permittee that allows a temporary employee or volunteer to work under a
22 permit without approval from the department in accordance with this section is
23 subject to Section 4400.

24 (d) The department shall charge a fee pursuant to subdivision (b) of Section
25 9200 for the issuance of a permit authorized by this section. If the department
26 determines that the costs to issue a permit authorized by this section are greater
27 than the costs to issue a permit pursuant to Section 9200, the department may
28 charge a permit fee in an amount that is greater than the amount imposed by
29 subdivision (b) of Section 9200 to recover those additional costs.

30 (e) The department may amend a permit issued under this section, including, but
31 not limited to, the addition or removal of individual temporary employees or
32 volunteers working under the permit, on the payment of a nonrefundable
33 application fee of one hundred dollars (\$100), as adjusted under Section 3755 or
34 regulations adopted by the department.

35 **Comment.** Section 9205 continues former Fish and Game Code Section 1002.5 without
36 substantive change.


37 **§ 9210. Transport of take pursuant to scientific or propagation permit**

38 9210. Mammals, birds and their nests and eggs, fish and their eggs, reptiles,
39 amphibians, mollusks, crustaceans, or any other form of plant or animal life taken
40 under the provisions of a scientific or propagation permit issued pursuant to
41 Section 9200 may be shipped or transported anywhere within or without the state

1 if prior written approval is obtained from the department and the shipment is
2 accompanied by the name, address, and permit number of the person holding the
3 scientific or propagation permit.

4 **Comment.** Section 9210 continues former Fish and Game Code Section 1003 without
5 substantive change.

6 TITLE 6. IMPOSITION OF ADMINISTRATIVE 7 PENALTIES BY DEPARTMENT

8  **Note.** This title would continue existing Chapter 6.5 (commencing with Section 2580) of
9 Division 3 of the Fish and Game Code. Throughout the title, references to “civil liability” have
10 been revised to refer to an “administrative penalty.” These changes are intended to make clear
11 that the provisions refer to administrative enforcement, rather than a civil action in court.

12 **The Commission invites comment on whether that substitution would change the**
13 **substantive meaning of any provision, or otherwise be problematic.**

14 § 9300. Definitions

15 9300. The definitions in this section govern the construction of this title.

16 (a) “Qualified hearing officer” means an attorney admitted to the State Bar of
17 California who is knowledgeable in fish and wildlife law.

18 (b) “Transport” means to move, convey, carry, or ship by any means, or to
19 deliver or receive for the purpose of movement, conveyance, carriage, or
20 shipment.

21 **Comment.** Section 9300 continues former Fish and Game Code Section 2580 without
22 substantive change.

23 § 9305. Administrative penalty for acts done for profit or personal gain

24 9305. (a) The department may impose an administrative penalty upon any
25 person pursuant to this title for any of the following acts done for profit or
26 personal gain:

27 (1) Unlawfully export, import, transport, sell, possess, receive, acquire, or
28 purchase, or unlawfully assist, conspire, or aid in the importing, exporting,
29 transporting, sale, possession, receiving, acquisition, or purchasing of, any bird,
30 mammal, amphibian, reptile, or fish which are taken or possessed in violation of
31 this code or the regulations adopted pursuant to this code.

32 (2) Unlawfully export, import, transport, sell, possess, receive, acquire, or
33 purchase, or unlawfully assist, conspire, or aid in the importing, exporting,
34 transporting, sale, possession, receiving, acquisition, or purchasing of any plants,
35 insects, or other species listed pursuant to the California Endangered Species Act
36 **(Chapter 1.5 (commencing with Section 2050))**, which are taken or possessed in
37 violation of this code or the regulations adopted pursuant to this code.

38 (3) Unlawfully export, import, transport, sell, possess, receive, acquire, or
39 purchase any bird, mammal, amphibian, reptile, or fish, or any endangered or
40 threatened species, or any fully protected bird, mammal, or fish which has been

1 taken, possessed, transported, or sold in violation of this code or the regulations
2 adopted pursuant to this code.

3 (4) Unlawfully possess any bird, mammal, amphibian, reptile, or fish, or any
4 endangered or threatened species, or any fully protected bird, mammal, or fish
5 which has been taken, possessed, transported, or sold in violation of this code or
6 any regulations adopted pursuant to this code within the maritime and territorial
7 jurisdiction of the state or within the portions of the special maritime jurisdiction
8 of the United States upon which the State of California exercises concurrent
9 jurisdiction, either by statute, deputation, or by contract with the United States.

10 (5) Having exported, imported, transported, sold, purchased, or received any
11 bird, mammal, amphibian, reptile, or fish, or any endangered or threatened
12 species, or any fully protected bird, mammal, or fish, unlawfully make or submit
13 any false record, account, label, or identification thereof.

14 (6) Attempt to commit any unlawful act, or unlawfully attempt to commit any
15 act, described in paragraphs (1) to (5), inclusive.

16 (b) The department may impose an administrative penalty upon any person
17 pursuant to this title for unlawfully exporting, importing, possessing, receiving, or
18 transporting in interstate commerce any container or package containing any bird,
19 mammal, amphibian, reptile, or fish, or any endangered or threatened species, or
20 any fully protected bird, mammal, or fish unless the container or package has
21 previously been plainly marked, labeled, or tagged in accordance with this code
22 and the regulations adopted pursuant to this code.

23 (c) The department may impose an administrative penalty upon any person
24 pursuant to this title for any unlawful failure or refusal to maintain any records or
25 paperwork as required by this code.

26 **Comment.** Section 9305 continues former Fish and Game Code Section 2582 without
27 substantive change.

28 § 9310. Application of title

29 9310. (a) If the loss is lawful under this code and regulations adopted pursuant
30 to this code, this title does not apply to the loss of any bird, mammal, amphibian,
31 reptile, or fish as a result of any of the following acts:

32 (1) Implementing lawful forestry practices.

33 (2) Implementing lawful agricultural practices.

34 (3) Any development or maintenance activity carried out pursuant to the terms
35 of a permit issued by the federal government, the state, or any city, county, or
36 district, or any agency thereof.

37 (b) This title does not apply to any action brought to recover damages under
38 Section 8450.

39 (c) No administrative penalty shall be imposed under this title until the
40 guidelines for the imposition of the penalties are adopted by the commission
41 pursuant to Section 9360.

1 **Comment.** Subdivision (a) of Section 9310 continues former Fish and Game Code Section
2 2581 without substantive change.

3 Subdivision (b) combines and continues former Fish and Game Code Section 2586(b) and the
4 last sentence of former Fish and Game Code Section 500(d) without substantive change.

5 Subdivision (c) continues former Fish and Game Code Section 2583(b) without substantive
6 change.

7 **§ 9315. Consultation regarding penalty sought**

8 9315. Upon an actionable violation, the department shall consult, as to the
9 appropriate civil or criminal remedy, with the district attorney in the jurisdiction
10 where the violation was alleged to have occurred. Before proceeding with a civil
11 action, the department shall seek the concurrence of the Attorney General.

12 **Comment.** Section 9315 continues former Fish and Game Code Section 2584(a) without
13 substantive change.

14 **§ 9320. Administrative penalty based on constructive knowledge**

15 9320. Except as provided in subdivision (b), any person who violates this code
16 or any regulation adopted to carry out this code, and, with the exercise of due care,
17 should have known that a bird, mammal, amphibian, reptile, or fish, or an
18 endangered or threatened species, or a fully protected bird, mammal, or fish, was
19 taken, possessed, transported, imported, received, purchased, acquired, or sold in
20 violation of, or in a manner unlawful under, this code, may be assessed an
21 administrative penalty.

22 **Comment.** Section 9320 continues the first sentence of former Fish and Game Code Section
23 2583(a) without substantive change.

24 **§ 9325. Penalty amounts**

25 9325. The administrative penalty imposed under this title by the department
26 shall not be more than ten thousand dollars (\$10,000) for each bird, mammal,
27 amphibian, reptile, or fish, or for each endangered or threatened species, or each
28 fully protected bird, mammal, or fish unlawfully taken, possessed, transported,
29 imported, received, purchased, acquired, or sold. This administrative penalty may
30 be in addition to any other penalty, civil or criminal, provided in this code or
31 otherwise by law.

32 **Comment.** Section 9325 continues the second and third sentences of former Fish and Game
33 Code Section 2583 without substantive change.

34 **§ 9330. Procedure**

35 9330. (a) The director, after investigation of the facts and circumstances, may
36 issue a complaint to any person on whom an administrative penalty may be
37 imposed pursuant to Section 9305 or 9320. The complaint shall allege the acts or
38 failures to act that constitute a basis for an administrative penalty and the amount
39 of the proposed administrative penalty. The complaint shall be served by personal
40 service or certified mail and shall inform the person so served that a hearing shall
41 be conducted within 60 days after the person has been served, unless the person

1 waives the right to a hearing. If the person waives the right to a hearing, the
2 department shall issue an order setting the penalty in the amount proposed in the
3 complaint. If the person has waived the right to a hearing or if the department and
4 the person have entered into a settlement agreement, the order shall be final.

5 (b) If the director issues a complaint pursuant to subdivision (a), the director
6 shall appoint a qualified referee or hearing board, composed of one or any
7 combination of the following persons:

8 (1) A qualified hearing officer, as defined in subdivision (a) of Section 9300.

9 (2) A retired judge of the Superior Court who is knowledgeable in fish and
10 wildlife law.

11 (3) A qualified neutral referee, appointed upon petition to the Superior Court in
12 which the violation was alleged to have occurred.

13 (c) Any hearing required under this section shall be conducted by the appointed
14 referee or hearing board according to the procedures specified in Sections 11507
15 to 11517, inclusive, of the Government Code, except as otherwise provided in this
16 section. In making a determination, the appointed referee or hearing board may
17 consider the records of the department in the matter, the complaint, and any new
18 facts brought to his or her attention by that person. The appointed referee or
19 hearing board shall be the sole trier of fact as to the existence of a basis for
20 liability under Section 9305 or 9320. The appointed referee or hearing board shall
21 make the determination of the facts of the case and shall prepare and submit the
22 proposed decision, including a recommended penalty, to the director for his or her
23 review and assistance in the penalty assessment process.

24 (d) The director may assess the recommended administrative penalty, reduce the
25 amount of the recommended penalty, or not impose any administrative penalty,
26 based upon the nature, circumstances, extent, and gravity of the prohibited acts
27 alleged, and the degree of culpability of the violator, or the director may enter into
28 a settlement agreement with the person in the best interests of the state or confirm
29 the amount of administrative penalties contained in the complaint. If the director
30 reduces the amount of the administrative penalty, does not impose the
31 administrative penalty, or enters into a settlement agreement, the director shall
32 seek the recommendation of the appointed referee or hearing board and enter into
33 the records of the case the reasons for that action, including the recommendation
34 of the appointed referee or hearing board. The decision of the director assessing
35 the administrative penalty is final. The proposed decision is a public record and
36 shall be served upon the person. The director may approve the proposed decision
37 in its entirety, or the director may reduce the proposed penalty and adopt the
38 balance of the proposed decision.

39 (e) Upon the final assessment of the administrative penalty, the department shall
40 issue an order setting the amount of the administrative penalty to be imposed. An
41 order setting the amount of an administrative penalty under this section becomes
42 effective and final upon the issuance of the order, and payment shall be made
43 within 30 days of issuance. Copies of the order shall be served by personal service

1 or by certified mail upon the person served with the complaint and upon other
2 persons who appeared before the director and requested a copy. Copies of the
3 order shall be provided to any person within 10 days of receipt of a written request
4 from that person.

5 (g) Within 30 days after service of a copy of an order setting the amount of the
6 administrative penalty, any person so served may file with the superior court a
7 petition for a writ of mandate for review of the order. In all proceedings pursuant
8 to this subdivision, the court shall exercise its independent judgment on the
9 evidence in the whole record. The filing of a petition for a writ of mandate shall
10 not stay any other civil or criminal action.

11 (h) The records of the case, after all appeals are final, are public records, as
12 defined in subdivision (d) of Section 6252 of the Government Code.

13 **Comment.** Section 9330 restates former Fish and Game Code Section 2584(b) through (h)
14 without substantive change.

15 **Note.** Proposed Section 9330 is intended to restate existing Section 2584(b) through (h) to
16 clarify the meaning of those provisions, without changing their substantive effect. The existing
17 provision reads as follows:

18 “2584. (b) The director shall appoint a qualified referee or hearing board, composed of one or any
19 combination of the following persons:

20 (1) A qualified hearing officer, as defined in subdivision (a) of Section 2580.

21 (2) A retired judge of the Superior Court who is knowledgeable in fish and wildlife law.

22 (3) A qualified neutral referee, appointed upon petition to the Superior Court in which the
23 violation was alleged to have occurred.

24 (c) The director, after investigation of the facts and circumstances, may issue a complaint to any
25 person on whom a civil penalty may be imposed pursuant to Section 2582 or 2583. The complaint
26 shall allege the acts or failures to act that constitute a basis for a civil penalty and the amount of
27 the proposed civil penalty. The complaint shall be served by personal service or certified mail and
28 shall inform the person so served that a hearing shall be conducted within 60 days after the person
29 has been served, unless the person waives the right to a hearing. If the person waives the right to a
30 hearing, the department shall issue an order setting liability in the amount proposed in the
31 complaint. If the person has waived the right to a hearing or if the department and the person have
32 entered into a settlement agreement, the order shall be final.

33 (d) Any hearing required under this section shall be conducted by a referee or hearing board
34 according to the procedures specified in Sections 11507 to 11517, inclusive, of the Government
35 Code, except as otherwise provided in this section. In making a determination, the hearing officer
36 may consider the records of the department in the matter, the complaint, and any new facts
37 brought to his or her attention by that person. The hearing officer shall be the sole trier of fact as
38 to the existence of a basis for liability under Section 2582 or 2583. The hearing officer shall make
39 the determination of the facts of the case and shall prepare and submit the proposed decision,
40 including recommended penalty assessment, to the director for his or her review and assistance in
41 the penalty assessment process.

42 (e) The director may assess the civil penalty, and may reduce the amount, or not impose any
43 assessment, of civil penalties based upon the nature, circumstances, extent, and gravity of the
44 prohibited acts alleged, and the degree of culpability of the violator; or the director may enter into
45 a settlement agreement with the person in the best interests of the state or confirm the amount of
46 civil penalties contained in the complaint. If the director reduces the amount of the civil penalty,
47 does not impose the civil penalty, or enters into a settlement agreement, the director shall seek the
48 recommendation of the hearing officer and enter into the records of the case the reasons for that
49 action, including the hearing officer’s recommendation. The decision of the director assessing the

civil penalty is final. The proposed decision is a public record and shall be served upon the person. The director may approve the proposed decision in its entirety, or the director may reduce the proposed penalty and adopt the balance of the proposed decision.

(f) Upon the final assessment of the civil penalty, the department shall issue an order setting the amount of the civil penalty to be imposed. An order setting civil liability under this section becomes effective and final upon the issuance thereof, and payment shall be made within 30 days of issuance. Copies of the order shall be served by personal service or by certified mail upon the person served with the complaint and upon other persons who appeared before the director and requested a copy. Copies of the order shall be provided to any person within 10 days of receipt of a written request from that person.

(g) Within 30 days after service of a copy of an order setting the amount of the civil penalty, any person so served may file with the superior court a petition for a writ of mandate for review of the order. In all proceedings pursuant to this subdivision, the court shall exercise its independent judgment on the evidence in the whole record. The filing of a petition for a writ of mandate shall not stay any other civil or criminal action.

(h) The records of the case, after all appeals are final, are public records, as defined in subdivision (d) of Section 6252 of the Government Code.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

§ 9335. Penalty does not preclude forfeiture

9335. The administrative penalties imposed under this title are in addition to any forfeiture of equipment pursuant to Section 8630, or forfeiture of birds, mammals, amphibians, reptiles, or fish pursuant to Section 8600.

Comment. Section 9335 continues former Fish and Game Code Section 2585 without substantive change.

§ 9340. Counsel

9340. Notwithstanding Section 12511 of the Government Code, the department may retain or appoint legal counsel to prepare and prosecute a civil action under this title to recover an administrative penalty.

Comment. Section 9340 continues former Fish and Game Code Section 2587(a) without substantive change.

§ 9345. Limitation period

9345. An action to recover an administrative penalty imposed under this title shall be commenced within three years after discovery of the commission of the offense.

Comment. Section 9345 continues former Fish and Game Code Section 2587(b) without substantive change.

§ 9350. Deposit of penalties and revenue

9350. All administrative penalties and revenues from forfeitures collected pursuant to this title shall be deposited in the Fish and Game Preservation Fund.

Comment. Section 9350 continues former Fish and Game Code Section 2588 without substantive change.

1 **§ 9355. Implementing regulations**

2 9355. The commission and the department may adopt regulations as are
3 necessary to carry out their responsibilities under this title.

4 **Comment.** Section 9355 continues former Fish and Game Code Section 2589 without
5 substantive change.

6 **§ 9360. Guidelines for administrative penalties**

7 9360. (a) The commission shall, by regulation, adopt guidelines to assist the
8 director and the department in ascertaining the amount of administrative penalties
9 to be imposed pursuant to Section 9305 or 9320. The guidelines may include
10 monetary amounts or ranges of monetary amounts that the commission finds are
11 adequate to deter illegal actions and partially compensate the people of California
12 for losses to the fish and wildlife resources from illegal transactions described in
13 Section 9305 or 9320 for profit or personal gain.

14 (b) If the violation involves birds, mammals, amphibians, reptiles, or fish with a
15 value in the aggregate of less than four hundred dollars (\$400) and involves only
16 the transportation, taking, or receipt of fish or wildlife taken or possessed in
17 violation of this code, the guidelines shall provide that the administrative penalty
18 shall not exceed the maximum criminal fine provided by law for the violation in
19 this code or ten thousand dollars (\$10,000), whichever is less. For purposes of this
20 section, “value” means the retail market value if a market value exists, the
21 potential monetary gain to the accused or, for commercial species, the established
22 retail market value.

23 (c) The guidelines shall include consideration of the nature, circumstances,
24 extent, and gravity of the prohibited acts committed, and the degree of culpability
25 of the violator, including lesser penalties for acts that have little significant effect
26 upon the resources and greater penalties for acts that may cause serious injury to
27 the resources.

28 (d) Nothing in this title shall be used to establish a monetary value for fish or
29 wildlife resources in connection with any development, project, or land or water
30 use plan or activity as permitted by any federal, state, or local governmental
31 activity.

32 **Comment.** Section 9360 continues former Fish and Game Code Section 500(a) through (c),
33 and the first sentence of subdivision (d), without substantive change.

PART 2. HUNTING

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL LICENSURE REQUIREMENT

§ 9500. Take without license or entitlement

9500. (a) Except as provided in this code or regulations adopted pursuant to this code, it is unlawful to take any bird or mammal without a license or entitlement to do so.

(b) In addition to any other penalty or fine imposed pursuant to this code, if a person is convicted of a violation of this section, and was previously convicted of one or more offenses related to a taking in violation of this section, Section 30505, Section 33205, Section 34200, or former Fish and Game Code Section 3700, or related to the sale or purchase of a part of a bear in violation of Section 33455, separate from the offense before the court, the court may order as a condition of probation upon conviction of the offense before the court that the person attend the hunter education course designated in Section 10405, and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(1) If the person has one separate conviction, not more than 200 hours of community service.

(2) If the person has two or more separate convictions, not more than 300 hours of community service.

Comment. Subdivision (a) of Section 9500 restates former Fish and Game Code Section 3007 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 12001.5 applicable to a violation of former Fish and Game Code Section 3007 without substantive change, except to correct an apparent drafting error.

Notes. (1) Proposed Section 9500(a) is intended to restate existing Section 3007 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“3007. Except as provided in this code or regulations adopted pursuant thereto, every person who takes any bird or mammal shall procure a license or entitlement therefor.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 12001.5 refers to former Section 3700, which required a “duck stamp” when taking duck. Physical “stamps” are no longer required when taking duck. Instead, a person must have an electronically issued “duck hunting validation.” See Section 3700.1. Because the validation is the successor to the obsolete stamp, it seems that Section 12001.5 should also refer to Section 3700.1. Proposed Section 9500(b) would cure that omission.

The Commission invites comment on whether that addition would cause any problems.

CHAPTER 2. PROHIBITED METHODS

§ 9550. Shooting from vehicle

9550. It is unlawful to shoot at any game bird or mammal, including a marine mammal as defined in Section 530, from a powerboat, sailboat, motor vehicle, or airplane.

Comment. Section 9550 continues former Fish and Game Code Section 3002 without substantive change.

Note. The Commission invites comment on whether proposed Section 9550 should apply to all birds and mammals, only game birds and game mammals, or some other combination of categories.

§ 9555. Prohibited shotguns

9555. (a) It is unlawful to use or possess a shotgun larger than 10-gauge, or to use or possess a shotgun capable of holding more than six cartridges at one time, to take a mammal or bird.

(b) A shotgun that has been modified with the insertion of a plug is deemed, for the purpose of this section, to have a cartridge capacity equal to the number of cartridges that can be loaded into the weapon as modified.

(c) After a public hearing, the commission may adopt regulations relative to the ammunition capacity of shotguns for taking mammals or birds that are more restrictive than the limits provided in subdivision (a), or that it determines may be needed to conform to federal law.

Comment. Section 9555 continues former Fish and Game Code Section 2010 without change.

§ 9560. Trap gun

9560. (a) It is unlawful to set, cause to be set, or placed any trap gun.

(b) A “trap gun” is a firearm loaded with other than blank cartridges and connected to a string or other contrivance with which contact will cause the firearm to be discharged.

Comment. Section 9560 continues former Fish and Game Code Section 2007 without substantive change.

Note. In the first sentence of existing Section 2007, which would be continued by subdivision (a) of proposed Section 9560, the intended meaning of the word “placed” is unclear.

(1) Is the term intended to have a different meaning than the word “set”? If so, what is the distinction? If not, can the word “placed” be deleted from the provision?

(2) Does the provision make it unlawful to place a trap gun, or to cause a trap gun to be placed?

The Commission invites comment on these questions.

§ 9565. Other prohibited methods of taking

9565. (a) Except as otherwise provided in this code, it is unlawful to take a bird or mammal with a net, pound, cage, trap, set line or wire, or poisonous substance,

or to possess a bird or mammal so taken, whether taken within or without this state.

(b) In the absence of evidence that a bird or mammal was taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, proof of possession of a bird or mammal is prima facie evidence that the bird or mammal was taken with a net, pound, cage, trap, set line or wire, or poisonous substance.

(c) This section does not apply to any of the following:

(1) The lawful taking of a fur-bearing mammal, nongame bird, or nongame mammal.

(1) The lawful taking of a mammal found to be injuring crops or property.

(2) The taking of a bird or mammal under a depredation permit.

(3) The taking of a bird or mammal by an employee of the department acting in an official capacity.

(4) The taking of a bird or mammal in accordance with the conditions of a scientific or propagation permit by the holder of that permit.

(5) The taking of a bird or mammal in accordance with an ongoing mining operation mitigation plan approved by the department pursuant to **Section ____**.

Comment. Subdivision (a) of Section 9565 restates former Fish and Game Code Section 3005(a) without substantive change.

Subdivision (b) restates former Fish and Game Code Section 3005(c) without substantive change.

Subdivision (c) restates former Fish and Game Code Section 3005(d) without substantive change.

Existing Section 3005(b), governing mitigation plans relating to mining operations, is continued by Section ____.

Notes. (1) The law governing approval of a mining mitigation plan will be located in a later part of the proposed Fish and Wildlife Code. When that location is determined, the cross-reference in proposed Section 9565(c)(5) will be completed.

(2) Proposed Section 9565 is intended to restate subdivisions (a), (c), and (d) of existing Section 3005 to clarify the meaning of those provisions, without changing their substantive effect. The existing subdivisions read as follows:

“3005. (a) It is unlawful to take birds or mammals with any net, pound, cage, trap, set line or wire, or poisonous substance, or to possess birds or mammals so taken, whether taken within or without this state, except as provided in this code or, when relating to ongoing mining operations, in accordance with a mitigation plan approved by the department.

....

(c) Proof of possession of any bird or mammal that does not show evidence of having been taken by means other than a net, pound, cage, trap, set line or wire, or poisonous substance, is prima facie evidence that the birds or mammals were taken in violation of this section.

(d) This section does not apply to the lawful taking of fur-bearing mammals, nongame birds, nongame mammals, or mammals found to be injuring crops or property, to the taking of birds or mammals under depredation permits, to taking by employees of the department acting in an official capacity, or to taking in accordance with the conditions of a scientific or propagation permit by the holder of that permit.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provisions.

(3) Existing Section 3005(d), which would be continued by proposed Section 9565(c), exempts from application of the section various specified *takings* of mammals and birds, but does not

1 exempt *possession* of mammals or birds taken in any of those specified circumstances. That
2 possession, which would seem to necessarily follow from the taking, would therefore appear to
3 remain expressly prohibited by subdivision (a) of both sections.

4 **The Commission invites comment on whether this distinction was intended to be drawn**
5 **by the existing provision.**

6 **§ 9570. Herding with vehicle**

7 9570. It is unlawful to pursue, drive, or herd any bird or mammal with any
8 motorized water, land, or air vehicle, including, but not limited to, a motor vehicle,
9 airplane, powerboat, or snowmobile, except in any of the following circumstances:

10 (a) On private property, by the landowner or tenant, to haze birds or mammals
11 for the purpose of preventing damage by that wildlife to private property.

12 (b) Pursuant to a permit from the department issued under regulations adopted
13 by the commission.

14 (c) In the pursuit of agriculture.

15 **Comment.** Section 9570 continues former Fish and Game Code Section 3003.5 without
16 substantive change.

17 **§ 9575. Remote use of computer or other device**

18 9575. (a) It is unlawful for a person to shoot, shoot at, or kill a bird or mammal
19 with a gun or other device accessed via an Internet connection in this state.

20 (b) It is unlawful for a person, firm, corporation, partnership, limited liability
21 company, association, or other business entity to do either of the following:

22 (1) Own or operate a shooting range, site, or gallery located in the state for the
23 purpose of online shooting or spearing of a bird or mammal.

24 (2) Create, maintain, or utilize an Internet Web site, or other service or business
25 in this state, for the purpose of online shooting or spearing of a bird or mammal.

26 (c) It is unlawful to possess or confine a bird or mammal in furtherance of an
27 activity prohibited by this section.

28 (d) It is unlawful for a person in this state to import into, or export from, this
29 state a bird or mammal that is killed by a device accessed via an Internet
30 connection.

31 (e) A bird or mammal that is possessed in violation of this section shall be
32 subject to seizure by the department.

33 (f) For the purposes of this section, “online shooting or spearing” means the use
34 of a computer or other device, equipment, software, or technology to remotely
35 control the aiming and discharge of a weapon, including, but not limited to, a
36 firearm, bow and arrow, spear, slingshot, harpoon, or other projectile device.

37 **Comment.** Section 9575 continues former Fish and Game Code Section 3003 without change.

38 **§ 9580. Unlawful entry onto land**


39 9580. It is unlawful to enter land for the purpose of discharging a firearm or
40 taking or destroying a mammal or bird, including waterfowl, on that land, without

1 having first obtained written permission from the owner, the owner's agent, or the
2 person in lawful possession of that land, if either of the following is true:

3 (a) The land belongs to or is occupied by another person and is either under
4 cultivation or enclosed by a fence.

5 (b) There are signs of any size and wording forbidding trespass or hunting or
6 both displayed along all exterior boundaries and at all roads and trails entering the
7 land, including land temporarily inundated by water flowing outside the
8 established banks of a river, stream, slough, or other waterway, at intervals not
9 less than three to the mile, which fairly advise a person about to enter the land that
10 the use of the land is so restricted.

11 **Comment.** Section 9580 continues former Fish and Game Code Section 2016 without change.

12  **Note.** Existing Section 2016 by its terms prohibits entering specified lands only for the
13 purpose of "discharging any firearm or taking or destroying any mammal or bird."

14 **The Commission invites comment on whether proposed Section 9580 should be revised to**
15 **include entering the specified lands for the purpose of taking or destroying any reptile or**
16 **amphibian.**

17 **§ 9585. Bird or mammal calls**

18 9585. It is unlawful to use any recorded or electrically amplified bird or
19 mammal call or sound, or recorded or electrically amplified imitation of a bird or
20 mammal call or sound, to assist in taking any bird or mammal, except nongame
21 birds and nongame mammals as permitted by regulations of the commission.

22 **Comment.** Section 9585 continues former Fish and Game Code Section 3012 without
23 substantive change.

24 **§ 9590. Hunting at night**

25 9590. (a) It is unlawful to take any bird or mammal, except a nongame mammal,
26 between one-half hour after sunset and one-half hour before sunrise of the
27 following day at the place of taking, except as otherwise provided in this code or
28 under regulations adopted by the commission.

29 (b) The commission may adopt regulations prohibiting the taking of any
30 nongame mammal between one-half hour after sunset and one-half hour before
31 sunrise of the following day at the place of taking.

32 **Comment.** Section 9590 continues former Fish and Game Code Section 3000 without
33 substantive change.

34 **CHAPTER 3. OTHER PROHIBITIONS AND REQUIREMENTS**

35 **§ 9700. Occupied buildings**

36 9700. It is unlawful for a person, other than the owner, person in possession of
37 the premises, or a person having the express permission of the owner or person in
38 possession of the premises, while within 150 yards of an occupied dwelling house,
39 residence, or other building, or within 150 yards of a barn or other outbuilding
40 used in connection with an occupied dwelling house, residence, or other building,

1 to either hunt or discharge a firearm or other deadly weapon while hunting. The
2 150-yard area is a “safety zone.”

3 **Comment.** Section 9700 continues former Fish and Game Code Section 3004(a) without
4 change.

5 **§ 9705. Public roads**

6 9705. It is unlawful for a person to intentionally discharge a firearm or release
7 an arrow or crossbow bolt over or across a public road or other established way
8 open to the public in an unsafe and reckless manner.

9 **Comment.** Section 9705 continues former Fish and Game Code Section 3004(b) without
10 change.

11 **§ 9710. Intoxication**

12 9710. It is unlawful to take a bird or mammal with a firearm, BB device as
13 defined in Section 16250 of the Penal Code, crossbow, or bow and arrow, while
14 intoxicated.

15 **Comment.** Section 9710 continues former Fish and Game Code Section 3001 without
16 substantive change.

17 **§ 9715. Possession of loaded long gun in vehicle**

18 9715. (a) It is unlawful to possess a loaded rifle or shotgun in any vehicle or
19 conveyance or its attachments that is standing on or along or is being driven on or
20 along any public highway or other way open to the public.

21 (b) A rifle or shotgun shall be deemed to be loaded for the purposes of this
22 section when there is an unexpended cartridge or shell in the firing chamber but
23 not when the only cartridges or shells are in the magazine.

24 (c) The provisions of this section shall not apply to peace officers or members of
25 the Armed Forces of this state or the United States, while on duty or going to or
26 returning from duty.

27 **Comment.** Section 9715 continues former Fish and Game Code Section 2006 without
28 substantive change.

29 **§ 9720. Hunting dogs**

30 9720. (a) It is unlawful for the owner of a dog engaged in hunting in an area
31 where the owner is authorized to hunt to fail to exercise physical control of the
32 dog, as required by this code or regulations adopted pursuant to this code.

33 (b) Dogs used for hunting that have been vaccinated for rabies in their county of
34 residence in conformity with state law regulating vaccinations in rabies areas are
35 not subject to rabies vaccination requirements of local ordinances outside their
36 county of residence.

37 **Comment.** Section 9720 continues former Fish and Game Code Section 3008 without
38 substantive change.

1 **§ 9725. Removal of hunting dog collar**

2 9725. (a) It is unlawful for a person to remove from a hunting dog any collar,
3 including an electronic or radio transmitting device, without possessing written
4 permission from the dog's owner allowing the removal of the collar.

5 (b) As used in this section, "hunting dog" means a dog in the field actively
6 engaged in the taking of mammals or birds, or a dog actively being trained for the
7 taking of mammals or birds, that is located in an area where mammals or birds can
8 be taken, at that time and place, in accordance with existing law.

9 (c) This section does not apply to a law enforcement officer or an animal control
10 officer in the performance of his or her duty, or to a person who is assisting an
11 injured dog.

12 **Comment.** Section 9725 continues former Fish and Game Code Section 2011.5 without
13 change.

14 **§ 9730. Bounty**

15 9730. It is unlawful for any person, including state, federal, county, and city
16 officials or their agents, to authorize, offer or pay a bounty for any bird or
17 mammal. This section does not apply to any person with respect to the taking of
18 any bird or mammal on the private property of such person.

19 **Comment.** Section 9730 continues former Fish and Game Code Section 2019 without change.

20 **§ 9735. Bird or mammal in possession of another**

21 9735. (a) It is unlawful for any person to take, mutilate, or destroy any bird or
22 mammal lawfully in the possession of another.

23 (b) For the purpose of this section, a bird or mammal shall be deemed in
24 possession when it is actually reduced to physical possession or when it is
25 wounded or otherwise maimed and the person who wounded or otherwise maimed
26 it is in hot pursuit.

27 **Comment.** Section 9735 continues former Fish and Game Code Section 2011 without change.

28 **§ 9740. Capture or possession of live wild mammal or bird**

29 9740. (a) It is unlawful to capture any game mammal, game bird, nongame bird,
30 nongame mammal, or furbearer, or to possess or confine any live game mammal,
31 game bird, nongame bird, nongame mammal, or furbearer taken from the wild,
32 except as provided by this code or by regulations adopted pursuant to this code.
33 Any bird or mammal possessed or confined in violation of this section shall be
34 seized by the department.

35 (b) The commission may promulgate regulations permitting the temporary
36 confinement of game mammals, game birds, nongame birds, nongame mammals,
37 or furbearers for the purpose of treating the animals, if injured or diseased.

38 **Comment.** Section 9740 continues former Fish and Game Code Section 3005.5 without
39 substantive change.

CHAPTER 4. GENERAL PENALTIES

§ 9900. Taking without license

9900. (a) Notwithstanding subdivision (b) of Section 4400, the punishment for taking a mammal or bird for which a hunting license issued pursuant to Section 10210 is required or a tag, seal, or stamp is required, including a deer tag issued pursuant to **Section 3407**, without having in one's possession the required valid license, or without having in one's possession any required tag, seal, or stamp or when the taking of that mammal or bird is prohibited by allowable season, limit, time, or area, is punishable by a fine of not less than two hundred fifty dollars (\$250) or more than two thousand dollars (\$2,000), or imprisonment in a county jail for not more than one year, or by both that fine and imprisonment, or by any greater punishment prescribed by this code.

(b) If a person is charged with an offense described in subdivision (a) and produces in court a license, tag, seal, or stamp issued to the person and valid at the time of the person's arrest and if the taking was otherwise lawful with respect to season, limit, time, and area, the court may reduce the charge to an infraction punishable by a fine of not less than fifty dollars (\$50) and not more than two hundred fifty dollars (\$250).

Comment. Section 9900 continues former Fish and Game Code Section 12002.1 without substantive change.

§ 9905. Taking during trespassing

9905. The court before whom any person has been convicted of trespassing under Section 602 of the Penal Code shall, in addition to any other fine or forfeiture imposed, confiscate any bird or mammal taken while trespassing, and shall dispose of the bird or mammal to a charitable institution or cause it to be destroyed if unfit for human consumption.

Comment. Section 9905 continues former Fish and Game Code Section 12164 without substantive change.

§ 9910. Punishment for third and subsequent convictions

9910. (a) Upon the third conviction of a person of a violation of any provision of this code or regulation adopted pursuant to this code relating to the taking or possession of a bird or mammal in a five-year period, and upon a conviction subsequent to the three convictions during a five-year period, that person shall be prohibited from taking a bird or mammal in the state for three years from the date of the last conviction. The commission shall revoke a hunting license of a person prohibited from taking a bird or mammal in this state for the period of prohibition.

(b) It shall be unlawful for a person to obtain, or attempt to obtain, a hunting license during a period of prohibition.

Comment. Section 9910 continues former Fish and Game Code Section 12155 without change.

CHAPTER 5. NONLEAD AMMUNITION

§ 10000. Nonlead ammunition required in California condor range

10000. (a) Nonlead centerfire rifle and pistol ammunition, as determined by the commission, shall be required when taking big game, as defined in the department's mammal hunting regulations (14 Cal. Code Regs. 350), with rifle or pistol, and when taking coyote, within the California condor range.

(b) For purposes of this section, "California condor range" means:

(1) The department's deer hunting zone A South, but excluding Santa Cruz, Alameda, Contra Costa, San Mateo, and San Joaquin Counties, areas west of Highway 101 within Santa Clara County, and areas between Highway 5 and Highway 99 within Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern Counties.

(2) Areas within deer hunting zones D7, D8, D9, D10, D11, and D13.

(c) The requirements of this section shall remain in effect in the California condor range unless and until the more restrictive nonlead prohibitions required pursuant to Section 10005 are implemented.

Comment. Section 10000 continues former Fish and Game Code Section 3004.5(a) without substantive change.

§ 10005. Taking of wildlife in general

10005. (a) Except as provided in subdivision (c), and as soon as is practicable as implemented by the commission pursuant to subdivision (b), but by no later than July 1, 2019, nonlead ammunition, as determined by the commission, shall be required when taking all wildlife, including game mammals, game birds, nongame birds, and nongame mammals, with any firearm.

(b) The commission shall promulgate regulations by July 1, 2015, that phase in the requirements of this chapter. The requirements of this chapter shall be fully implemented statewide by no later than July 1, 2019. If any of the requirements of this chapter can be implemented practicably, in whole or in part, in advance of July 1, 2019, the commission shall implement those requirements. The commission shall not reduce or eliminate any existing regulatory restrictions on the use of lead ammunition in California condor range unless or until the additional requirements for use of nonlead ammunition as required by this chapter are implemented.

(c)(1) The prohibition in subdivision (a) shall be temporarily suspended for a specific hunting season and caliber upon a finding by the director that nonlead ammunition of a specific caliber is not commercially available from any manufacturer because of federal prohibitions relating to armor-piercing ammunition pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(2) Notwithstanding a suspension pursuant to paragraph (1), nonlead ammunition shall be used when taking big game mammals, nongame birds, or nongame mammals in the California condor range, as defined in Section 10000.

Comment. Subdivision (a) of Section 10005 continues former Fish and Game Code Section 3004.5(b) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 3004.5(i) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 3004.5(j) without substantive change.

§ 10010. Certification

10010. (a) The commission shall maintain, by regulation, a public process to certify ammunition as nonlead ammunition, and shall define, by regulation, nonlead ammunition as including only ammunition in which there is no lead content, excluding the presence of trace amounts of lead. The commission shall establish and annually update a list of certified ammunition.

(b) The list of certified ammunition shall include, but not be limited to, any federally approved nontoxic shotgun ammunition.

Comment. Section 10010 continues former Fish and Game Code Section 3004.5(c) without change.


§ 10015. Providing reduced cost nonlead ammunition

10015. (a) To the extent that funding is available, the commission shall establish a process that will provide hunters with nonlead ammunition at no or reduced charge. The process shall provide that the offer for nonlead ammunition at no or reduced charge may be redeemed through a coupon sent to a permit holder with the appropriate permit tag. If available funding is not sufficient to provide nonlead ammunition at no charge, the commission shall set the value of the reduced charge coupon at the maximum value possible through available funding, up to the average cost within this state for nonlead ammunition, as determined by the commission.

(b) The nonlead ammunition coupon program described in paragraph (1) shall be implemented only to the extent that sufficient funding, as determined by the Department of Finance, is obtained from local, federal, public, or other nonstate sources in order to implement the program.

(c) If the nonlead ammunition coupon program is implemented, the commission shall issue a report on the usage and redemption rates of ammunition coupons. The report shall cover calendar years 2008, 2009, and 2012. Each report shall be issued by June of the following year.

Comment. Section 10015 continues former Fish and Game Code Section 3004.5(d) without change.

 **Note.** Were the reports required in proposed Section 10015(c) prepared? If so, can that provision be omitted as obsolete?

1 **§ 10020. Report on California condors**

2 10020. The commission shall issue a report on the levels of lead found in
3 California condors. This report shall cover calendar years 2008, 2009, and 2012.
4 Each report shall be issued by June of the following year.

5 **Comment.** Section 9920 continues former Fish and Game Code Section 3004.5(e) without
6 change.

7 ☞ **Note.** Were the reports required in proposed Section 10020 prepared? If so, can that provision
8 be omitted as obsolete?

9 **§ 10025. Punishment**

10 10025. (a) A person who violates any provision of this chapter is guilty of an
11 infraction punishable by a fine of five hundred dollars (\$500). A second or
12 subsequent offense shall be punishable by a fine of not less than one thousand
13 dollars (\$1,000) or more than five thousand dollars (\$5,000).

14 (b) This chapter does not apply to government officials or their agents when
15 carrying out a statutory duty required by law.

16 **Comment.** Subdivision (a) of Section 10025 continues former Fish and Game Code Section
17 3004.5(g) without substantive change.

18 Subdivision (b) continues former Fish and Game Code Section 3004.5(h) without substantive
19 change.

20 **§ 10030. Notice**

21 10030. The department shall notify those hunters who may be affected by this
22 chapter.

23 **Comment.** Section 10030 continues former Fish and Game Code Section 3004.5(f) without
24 substantive change.

25 **CHAPTER 6. HUNTING-RELATED INJURIES**

26 **§ 10100. Failure to aid injured person**

27 10100. Every person who while taking any bird or mammal kills or injures
28 another person by the use of any firearm, bow and arrow, spear, slingshot, or other
29 weapon or device used in that taking and who knowingly either abandons that
30 person or fails to render to that injured person all necessary aid possible under the
31 circumstances is guilty of a felony.

32 **Comment.** Section 10100 continues former Fish and Game Code Section 3009 without
33 substantive change.

34 **§ 10105. Reporting injury**

35 10105. Any person who, while hunting, kills or wounds or witnesses the killing
36 or wounding of any human being, or domestic animal belonging to another, shall,
37 within 48 hours after the incident, forward a complete written report to the
38 Department of Fish and Wildlife, 1416 Ninth Street, Sacramento, California

1 95814, providing the full name and address of the person who forwarded the
2 report and all facts relating to the incident.

3 **Comment.** Section 10105 continues former Fish and Game Code Section 12151.5 without
4 substantive change.

5 **§ 10110. Killing or wounding of human being while hunting**

6 10110. (a) Whenever any person, while taking a bird or mammal, kills or
7 wounds any human being and that fact is ascertained by the department, the
8 department shall notify the district attorney of the county in which the act
9 occurred. The district attorney may thereupon bring an action in the superior court
10 of the county in which the act occurred for the purpose of determining the cause of
11 the killing or the wounding. These proceedings shall be conducted in the same
12 manner as an action to try a misdemeanor and the defendant may request that all
13 findings of fact shall be made by a jury. The court shall inform the defendant of
14 the nature of the proceedings and of the defendant's right to have a jury.

15 (b) If it is found that the defendant did the killing or wounding, but that it was
16 not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it
17 is found that the defendant did the killing or wounding intentionally, by an act of
18 gross negligence, or while under the influence of alcohol, the court shall issue an
19 order permanently prohibiting the defendant from taking any bird or mammal.

20 (c) If it is found that the defendant was negligent, but not grossly negligent, the
21 court shall issue an order prohibiting the defendant from taking any bird or
22 mammal for a period specified at the discretion of the court but not less than five
23 years.

24 (d) Any person who takes any bird or mammal in violation of an order issued
25 pursuant to this section is guilty of a felony.

26 **Comment.** Subdivisions (a) through (c) of Section 10110 continue former Fish and Game
27 Code Section 12150 without substantive change.

28 Subdivision (d) continues former Fish and Game Code Section 12001 without substantive
29 change.

30 **§ 10115. Petition for new trial**

31 10115. Any person who is prohibited from taking a bird or mammal pursuant to
32 Section 10110 may, upon petition, obtain a new trial in the court that ordered the
33 prohibition. The trial shall be with a jury if requested as provided in Section
34 10110, and shall be to determine if the prohibition was based on an intentional or
35 grossly negligent act or an act committed while under the influence of alcohol, in
36 which case the petition shall be denied. If however, it was based on a negligent act
37 not amounting to gross negligence the court may review and redetermine the
38 length of time for which no license should be issued such person. The court may
39 authorize the issuance of a license to the person after such time as the court shall
40 determine to be proper in light of the circumstances.

41 **Comment.** Section 10115 continues former Fish and Game Code Section 12150.5 without
42 substantive change.

Note. Existing Section 12150.5, which would be continued by proposed Section 10115, authorizes a person whose license has been *revoked* pursuant to Section 12150 to petition for a new trial to contest that revocation. However, Section 12150 does not expressly provide for a “revocation” of a license. It provides for an order barring a person from taking a bird or mammal. The effect is much the same, but the difference in wording could cause confusion.

In proposed Section 10115, the reference to “revocation” is replaced with a reference to an order prohibiting the taking of a bird or mammal.

The Commission invites comment on whether that change would cause any problems.

§ 10120. Killing or wounding domestic animal while hunting

10120. (a) Whenever any person, while taking a bird or mammal, kills or wounds any domestic animal belonging to another and that fact is ascertained by the department, the department shall notify the district attorney of the county in which the act occurred. The district attorney may thereupon bring an action in the superior court of the county in which the act occurred for the purpose of determining the cause of the killing or wounding. These proceedings shall be conducted in the same manner as an action to try a misdemeanor and the defendant may request that all findings of fact shall be made by a jury. The court shall inform the defendant of the nature of the proceedings and of the defendant’s right to have a jury.

(b) If it is found that the defendant did the killing or wounding but that it was not intentional or negligent, the court shall dismiss the proceeding. Otherwise, if it is found that the defendant did the killing or wounding intentionally or negligently, the court shall issue an order prohibiting the defendant from taking any bird or mammal for a period of five years.

Comment. Section 10120 continues former Fish and Game Code Section 12151 without substantive change.

§ 10125. Report of court order prohibiting take of bird or mammal

10125. (a) Whenever a person has been prohibited from taking any bird or mammal pursuant to Section 10110 or 10120, the court in which the proceeding for such action was had shall report the facts to the department at its Sacramento headquarters office. The report shall show the date and place of the occurrence, the name and address of the person who did the killing or wounding, the name and address of the person who was killed or wounded or the name and address of the owner of the animal, as the case may be, and such other information as the department may require.

(b) The department shall maintain a record of all orders issued under Section 10110 or 10120. The record shall show the name and address of the person involved, the date of such action, and the date of expiration of such order. The department shall periodically transmit copies of such records to each person authorized to issue a hunting license and to each district attorney in the state.

Comment. Section 10125 continues former Fish and Game Code Section 12152 without substantive change.

1 **§ 10130. Proof of financial responsibility**

2 10130. (a) Any person who has been prohibited from taking any bird or mammal
3 pursuant to Section 10110 or 10120 shall not apply for a hunting license or take
4 any bird or mammal unless the person has filed with the department proof of
5 ability to respond in damages in an amount of at least ten thousand dollars
6 (\$10,000) for personal injury or death of any person, subject to a maximum of
7 twenty thousand dollars (\$20,000) for the injury or death of two or more persons
8 in any one accident and at least five thousand dollars (\$5,000) for property damage
9 resulting from any one accident.

10 (b) Proof of ability to respond in damages may be given by any of the following:

11 (1) The written certificate of any insurance carrier duly authorized to do
12 business within the state that it has issued to or for the benefit of the person named
13 a public liability insurance policy which is, at the date of the certificate, in full
14 force and effect. The certificate shall certify that the policy cited shall not be
15 canceled except upon 10 days' prior written notice to the department.

16 (2) A bond in the amount of twenty-five thousand dollars (\$25,000) approved by
17 a judge of a court of record. The bond shall be conditioned for the payment of the
18 amounts specified in this section and shall provide for the entry of judgment on
19 motion of the state in favor of any holder of any final judgment on account of
20 damages to property or injury to any person caused while the licensee is taking
21 any bird or mammal.

22 **Comment.** Section 10130 continues former Fish and Game Code Section 12150.6 without
23 substantive change.

24 **§ 10135. Cancellation of guarantee of financial responsibility**

25 10135. The department shall, upon request, cancel any bond or shall direct the
26 return to the person entitled thereto of any money or securities deposited pursuant
27 to this code as proof of ability to respond in damages:

28 (a) On the filing of an affidavit with the department that the person will not
29 thereafter engage in the taking of any bird or mammal.

30 (b) In the event of the permanent incapacity of such person to engage in the
31 taking of any bird or mammal.

32 (c) Upon the death of the person on whose behalf such proof was filed.

33 **Comment.** Section 10135 continues former Fish and Game Code Section 12150.7 without
34 change.

35 **§ 10140. Additional financial responsibility based on claim or judgment**

36 10140. Whenever any claim is made or judgment is rendered against a person
37 required to file proof of ability to respond in damages, that person shall not apply
38 for a hunting license or take any bird or mammal until additional proof of ability
39 to respond in damages has been filed with the department in an amount sufficient
40 to provide proof of ability to respond in damages in the amount specified in

1 Section 10130 over and above all claims made against previously filed proof of
2 ability to respond in damages.

3 **Comment.** Section 10140 continues former Fish and Game Code Section 12150.8 without
4 substantive change.

5 TITLE 2. HUNTING LICENSES

6 CHAPTER 1. GENERAL PROVISIONS

7 § 10200. Eligibility

8 10200. (a) No hunting license may be issued to any person unless that person
9 presents to the person authorized to issue that license any of the following:

10 (1) Evidence that the person has held a hunting license issued by this state in a
11 prior year.

12 (2) Evidence that the person holds a current hunting license, or a hunting license
13 issued in either of the two previous hunting years by another state or province.

14 (3) A certificate of completion of a course in hunter education, principles of
15 conservation, and sportsmanship, as provided in Title 3. A hunter education
16 instruction validation stamp shall be permanently affixed to certificates of
17 completion that have been issued before January 1, 2008.

18 (4) A certificate of successful completion of a hunter education course in
19 another state or province.

20 (5) Evidence of completion of a course in hunter education, principles of
21 conservation, and sportsmanship, which the commission may, by regulation,
22 require.

23 (b) The evidence required in subdivision (a) shall be forwarded to the
24 department.

25 (c) Subdivision (a) does not apply to any person purchasing a hunting license
26 under paragraph (5) of subdivision (a) of Section 10210. However, that license
27 shall not qualify as evidence required in subdivision (a) of this section.

28 **Comment.** Section 10200 continues former Fish and Game Code Section 3050 without
29 substantive change.

30 § 10205. Hunter education

31 10205. Applicants for hunting licenses shall first satisfactorily complete a hunter
32 education equivalency examination and obtain a certificate of equivalency as
33 provided by regulations adopted by the commission, or show proof of completion
34 of a hunter education training course, or show a previous year's hunting license.

35 **Comment.** Section 10205 continues former Fish and Game Code Section 1053.5 without
36 change.

1 **§ 10210 (repealed July 1, 2020). Fees**

2 10210. (a) A hunting license, granting the privilege to take birds and mammals,
3 shall be issued to any of the following:

4 (1) A resident of this state, 18 years of age or older, upon the payment of a base
5 fee of thirty-one dollars and twenty-five cents (\$31.25).

6 (2) A resident or nonresident, who is under 18 years of age on July 1 of the
7 licensing year, upon the payment of a base fee of eight dollars and twenty-five
8 cents (\$8.25), regardless of whether that person applies before or after July 1 of
9 that year. A license issued pursuant to this paragraph shall be known as a junior
10 hunting license.

11 (3) A nonresident, 18 years of age or older, upon the payment of a base fee of
12 one hundred eight dollars and fifty cents (\$108.50).

13 (4) A nonresident, 18 years of age or older, valid only for two consecutive days
14 upon payment of the fee set forth in paragraph (1). A license issued pursuant to
15 this paragraph is valid only for taking resident and migratory game birds, resident
16 small game mammals, fur-bearing mammals, and nongame mammals, as defined
17 in this code or in regulations adopted by the commission.

18 (5) A nonresident, valid for one day and only for the taking of domesticated
19 game birds and pheasants while on the premises of a licensed game bird club, or
20 for the taking of domesticated migratory game birds in areas licensed for shooting
21 those birds, upon the payment of a base fee of fifteen dollars (\$15).

22 (b) The base fees specified in this section are applicable to the 2004 license year,
23 and shall be adjusted annually thereafter pursuant to Section 3755.

24 (c) The commission shall adjust the amount of the fees specified in subdivision
25 (b), as necessary, to fully recover, but not exceed, all reasonable administrative
26 and implementation costs of the department and the commission relating to those
27 licenses.

28 (d) A person who is 16 or 17 years of age, is in possession of a valid junior
29 hunting license, and is issued an entry permit pursuant to Section 551 of Title 14
30 of the California Code of Regulations may hunt in the area described in the entry
31 permit unaccompanied by a person over 18 years of age but shall not be
32 accompanied by a person under 16 years of age.

33 (e) This section shall remain in effect only until July 1, 2020, and as of that date
34 is repealed, unless a later enacted statute, that is enacted before January 1, 2021,
35 deletes or extends that date.

36 **Comment.** Section 10210 continues former Fish and Game Code Section 3031, as amended by
37 2014 Cal. Stat. ch. 456, § 1, without substantive change.

38 **§ 10210 (effective July 1, 2020). Fees**

39 10210. (a) A hunting license, granting the privilege to take birds and mammals,
40 shall be issued to any of the following:

41 (1) A resident of this state, 16 years of age or older, upon the payment of a base
42 fee of thirty-one dollars and twenty-five cents (\$31.25).

1 (2) A resident or nonresident, who is under 16 years of age on July 1 of the
2 licensing year, upon the payment of a base fee of eight dollars and twenty-five
3 cents (\$8.25), regardless of whether that person applies before or after July 1 of
4 that year. A license issued pursuant to this paragraph shall be known as a junior
5 hunting license.

6 (3) A nonresident, 16 years of age or older, upon the payment of a base fee of
7 one hundred eight dollars and fifty cents (\$108.50).

8 (4) A nonresident, 16 years of age or older, valid only for two consecutive days
9 upon payment of the fee set forth in paragraph (1). A license issued pursuant to
10 this paragraph is valid only for taking resident and migratory game birds, resident
11 small game mammals, fur-bearing mammals, and nongame mammals, as defined
12 in this code or in regulations adopted by the commission.

13 (5) A nonresident, valid for one day and only for the taking of domesticated
14 game birds and pheasants while on the premises of a licensed game bird club, or
15 for the taking of domesticated migratory game birds in areas licensed for shooting
16 those birds, upon the payment of a base fee of fifteen dollars (\$15).

17 (b) The base fees specified in this section are applicable to the 2004 license year,
18 and shall be adjusted annually thereafter pursuant to Section 3755.

19 (c) The commission shall adjust the amount of the fees specified in subdivision
20 (b), as necessary, to fully recover, but not exceed, all reasonable administrative
21 and implementation costs of the department and the commission relating to those
22 licenses.

23 (d) A person who is 16 or 17 years of age, is in possession of a valid resident or
24 nonresident hunting license, and is issued an entry permit pursuant to Section 551
25 of Title 14 of the California Code of Regulations may hunt in the area described in
26 the entry permit unaccompanied by a person over 18 years of age but shall not be
27 accompanied by a person under 16 years of age.

28 (e) This section shall become operative on July 1, 2020.

29 **Comment.** Section 10210 continues former Fish and Game Code Section 3031, as added by
30 2014 Cal. Stat. ch. 456, § 1, without substantive change.

31 **§ 10215. Job Corps enrollees**

32 10215. For the purpose of obtaining a hunting license, enrollees in the Job
33 Corps, created by the Economic Opportunity Act of 1964 (Public Law 88-452),
34 shall be deemed to be residents of California.

35 **Comment.** Section 10215 continues former Fish and Game Code Section 3031.5 without
36 change.

37 **§ 10220. Term of license**

38 10220. A hunting license authorizes the person to whom it is issued to take birds
39 and mammals, in accordance with law, for a term of one year from July 1 to June
40 30, or, if issued after the beginning of the term, for the remainder of the term.

1 **Comment.** Section 10220 continues the first part of former Fish and Game Code Section 3037
2 without change.

3 **§ 10225. Lifetime license**

4 10225. (a) In addition to Sections 9100 and 10210, and notwithstanding Section
5 10220, the department shall issue lifetime hunting licenses under this section. A
6 lifetime hunting license authorizes the taking of birds and mammals anywhere in
7 this state in accordance with the law for purposes other than profit for the life of
8 the person to whom issued, unless revoked for a violation of this code or
9 regulations adopted pursuant to this code. A lifetime hunting license is not
10 transferable. A lifetime hunting license does not include any special tags, stamps,
11 or fees.

12 (b) A lifetime hunting license may be issued to residents of this state, as follows:

13 (1) To a person 62 years of age or over, upon payment of a base fee of three
14 hundred sixty-five dollars (\$365).

15 (2) To a person 40 years of age or over, and less than 62 years of age, upon
16 payment of a base fee of five hundred forty dollars (\$540).

17 (3) To a person 10 years of age or over, and less than 40 years of age, upon
18 payment of a base fee of six hundred dollars (\$600).

19 (4) To a person less than 10 years of age, upon payment of a base fee of three
20 hundred sixty-five dollars (\$365).

21 (c) Nothing in this section requires a person less than 16 years of age to obtain a
22 license to take birds or mammals except as required by law.

23 (d) Nothing in this section exempts an applicant for a license from meeting other
24 qualifications or requirements otherwise established by law for the privilege of
25 sport hunting.

26 (e) The base fees specified in this section are applicable commencing January 1,
27 2004, and shall be adjusted annually thereafter pursuant to Section 3755.

28 (f) The commission shall adjust the amount of the fees specified in subdivision
29 (b), as necessary, to fully recover, but not exceed, all reasonable administrative
30 and implementation costs of the department and the commission relating to those
31 licenses.

32 **Comment.** Section 10225 continues former Fish and Game Code Section 3031.2 without
33 substantive change.

34 **§ 10230. “Free Hunting Day”**

35 10230. (a) Notwithstanding Section 10210, the director may designate two days
36 per year as “Free Hunting Days.” One free hunting day may be established during
37 the fall hunting season, and the other free hunting day may be established during
38 the winter hunting season. The department shall publish the exact dates of the free
39 hunting days in annual publications of the department regarding current hunting
40 regulations.

(b) During a free hunting day, a California resident may hunt if accompanied by a hunter who holds a valid hunting license issued by the State of California, has held a valid hunting license for at least the last three consecutive years, is at least 21 years of age, and accompanies only one unlicensed hunter in the field at a time. An unlicensed hunter shall participate in the free hunting days for only one license year and shall complete a hunter education course approved by the department and register with the department, or an agent of the department, prior to participating in a free hunting day. While engaged in hunting activities, the unlicensed hunter shall remain in close visual and verbal contact with the licensed hunter at all times so that the licensed hunter is able to provide adequate direction and immediately assume control of a firearm from the unlicensed hunter at any time.

(c) An unlicensed hunter who participates in a free hunting day shall have in his or her possession all of the following:

(1) A certificate of completion of a course in hunter education as required in paragraph (3) of subdivision (a) of Section 10200.

(2) Any required tags or report cards.

(3) Any required federal entitlements.

(4) Any required entry permits.

(d) Unlicensed hunters participating in free hunting days shall not take any species that requires a draw or lottery to obtain a tag.

(e) An unlicensed hunter hunting pursuant to this section is subject to all of the limitations, restrictions, conditions, statutes, rules, and regulations applicable to the holder of a valid hunting license, except the requirement to possess a valid hunting license.

(f) The department may adopt additional minimum requirements and restrictions for a licensed hunter or unlicensed hunter participating in a free hunting day pursuant to this section.

(g) This section shall not be implemented until the department's Automated License Data System is fully operational for at least one year.

Comment. Section 10230 continues former Fish and Game Code Section 3040 without substantive change.

Note. The Commission invites comment on whether subdivision (g) of this section is obsolete.

CHAPTER 2. MILITARY PERSONNEL

§ 10300. Disabled veteran or recovering service member

10300. (a) Pursuant to this section, the department shall issue to any disabled veteran or recovering service member who has not been convicted of any violation of this code a reduced fee hunting license that authorizes the licensee to take a bird or mammal as authorized by this code and regulations adopted pursuant to this code.

1 (b) The base license fee for a reduced fee hunting license shall be four dollars
2 (\$4) for the hunting license year beginning on July 1, 1995, and, for the following
3 years, this license fee may be annually reviewed and adjusted in accordance with
4 Section 3755.

5 (c) For the purposes of this section, the following terms have the following
6 meanings:

7 (1) “Disabled veteran” means a person having a 50 percent or greater service-
8 connected disability and an honorable discharge from military service.

9 (2) “Recovering service member” means a member of the military who meets
10 the definition of “recovering service member” in Section 1602(7) of the federal
11 National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181).

12 (d) A person applying for a reduced fee hunting license shall submit to the
13 department adequate documentation for the department to determine whether the
14 person is, in fact, eligible for a reduced fee hunting license. The department shall
15 not issue a reduced fee hunting license to a person unless it is satisfied that the
16 person has provided adequate documentation of eligibility for that license.

17 (e) A disabled veteran must submit the following documentation:

18 (1) Proof of an honorable discharge from military service.

19 (2) Proof of the disability described in paragraph (1) of subdivision (c), either by
20 certification from the United States Department of Veterans Affairs or by
21 presentation of a license issued pursuant to this section in the preceding license
22 year.

23 (f) A recovering service member must submit a letter to the department stating
24 that the person is a recovering service member as defined in subdivision (d), from
25 either that person’s commanding officer or a military medical doctor. The letter
26 may be submitted either in hard copy form or online.

27 **Comment.** Section 10300 continues former Fish and Game Code Section 3033 without
28 substantive change.

29 **§ 10305. Occupant of military medical facility**

30 10305. (a) Any member of the armed forces of the United States who is in a
31 military medical facility and who is at least 70 percent disabled shall, on
32 application, be issued a hunting permit by the department, in lieu of a hunting
33 license and appropriate tags, authorizing the taking of birds and mammals. If the
34 permit covers a period during which birds or mammals may only be taken or
35 shipped with appropriate tags, the department may issue those tags with the permit
36 or shall endorse the permit to authorize that taking and shipping without the tags.

37 (b) A permit issued pursuant to this section shall be valid only during the period
38 of time the permittee is in a military medical facility and is at least 70 percent
39 disabled.

40 (c) Certification by the commanding officer of the military medical facility shall
41 be sufficient proof of this period of time and extent of disability.

1 **Comment.** Section 10305 continues former Fish and Game Code Section 3038 without
2 substantive change.

3 **§ 10310. Special hunt by military personnel**

4 10310. Any organization conducting a special hunt by service members or
5 veterans residing in or assigned to a United States veterans or armed services
6 medical facility may apply to the commission for, and the commission may issue,
7 under terms and conditions it may impose, a permit to take birds and mammals
8 notwithstanding the provisions of Sections 9550 and 9715.

9 **Comment.** Section 10310 continues former Fish and Game Code Section 317 without
10 substantive change.

11 CHAPTER 3. COLORADO RIVER HUNTING LICENSES

12 **§ 10350. Qualification for license**

13 10350. A special Colorado River hunting license may be issued to any person
14 holding a hunting license issued by the State of Arizona.

15 **Comment.** Section 10350 continues former Fish and Game Code Section 3061 without
16 change.

17 **§ 10355. Additional qualification**

18 10355. The department, in conformity with regulations adopted by the
19 commission, may issue a special Colorado River hunting license when the
20 commission finds and determines that under the laws of the State of Arizona
21 substantially similar licenses are authorized to be issued to licensees of the State of
22 California upon substantially the same terms and conditions as are provided in this
23 article for the issuance of licenses to licensees of the State of Arizona.

24 **Comment.** Section 10355 continues former Fish and Game Code Section 3060 without
25 substantive change.

26 **§ 10360. Allowed take**

27 10360. A special Colorado River hunting license shall entitle the holder of the
28 license to take only migratory waterfowl and only in, on, or along the Colorado
29 River in accordance with the applicable state and federal laws and regulations or
30 orders made pursuant to those laws and regulations.

31 **Comment.** Section 10360 continues former Fish and Game Code Section 3062 without
32 substantive change.

33 **§ 10365. Fee and term**

34 10365. (a) The fee for a special Colorado River hunting license shall be two
35 dollars (\$2).

36 (b) The license shall be valid until the end of the calendar year in which it is
37 issued.

1 **Comment.** Section 10365 continues former Fish and Game Code Section 3063 without
2 substantive change.

3 TITLE 3. HUNTER SAFETY

4 **§ 10400. Legislative declaration**

5 10400. (a) It is the intent of the Legislature in enacting this title to ensure the
6 health and safety of its citizens engaged in activities requiring the use of hunting
7 implements.

8 (b) The Legislature finds and declares that individuals who engage in hunting
9 should possess an adequate understanding of hunter safety practices, principles of
10 conservation, and sportsmanship.

11 (c) It is also the intent of the Legislature that persons engaged in hunting be
12 mindful of their responsibilities to others, toward wildlife, and toward their natural
13 environment. The department shall take all steps necessary to carry out the
14 provisions of this title.

15 **Comment.** Section 10400 continues former Fish and Game Code Section 3049 without
16 substantive change.

17 **Note.** The Commission invites comment on whether any equivalent gender-neutral term
18 can be substituted for the term “sportsmanship” as used in subdivision (b) of proposed
19 Section 10400.

20 **§ 10405. Hunter instruction**

21 10405. (a) The department shall provide for a course of instruction in hunter
22 education, principles of conservation, and sportsmanship, and for this purpose may
23 cooperate with any reputable association or organization having as one of its
24 objectives the promotion of hunter safety, principles of conservation, and
25 sportsmanship.

26 (b) The department may designate as a hunter education instructor any person
27 found by it to be competent to give instruction in the courses required in this title.

28 (c) A hunter education instructor shall issue a certificate of completion as
29 provided by the department to a person that completes a course of instruction in
30 hunter safety, principles of conservation, and sportsmanship.

31 (d) The department shall prescribe a minimum level of skill and knowledge to
32 be required of all hunter education instructors, and may limit the number of
33 students per instructor in all required classes.

34 (e) The department may revoke the certificate of an instructor when, in the
35 opinion of the department, it is in the best interest of the state to do so.

36 (f) In order to recruit and retain hunter education instructors, the department
37 shall offer special hunting opportunities to qualified hunter education instructors
38 by providing a limited number of existing tags and other hunting opportunities.
39 The department may provide these tags and hunting opportunities through any of
40 the following methods:

(1) The private lands management program described in **Article 5 (commencing with Section 3400) of Chapter 2.**

(2) The Shared Habitat Alliance for Recreational Enhancement (SHARE) program described in **Article 3 (commencing with Section 1570) of Chapter 5 of Division 2.**

(3) Entering into cooperative agreements with federal, state, and local agencies that hold title to, or administer, lands or waters.

(4) Entering into cooperative agreements with landowners or tenants seeking depredation permits for game mammals as described in Section 31115, 34605, or 37365.

(5) Authorizing a maximum of 15 tags from the annual tag quota, as determined by the department.

(g) The department shall determine eligibility criteria for hunter education instructors seeking the hunting opportunities offered pursuant to subdivision (f). The department shall offer hunting opportunities to eligible hunter education instructors only by random drawing.

(h) The department may adopt regulations to implement this section.

Comment. Section 10405 continues former Fish and Game Code Section 3051 without substantive change.

Note. The Commission invites comment on whether any equivalent gender-neutral term can be substituted for the term “sportsmanship” as used in subdivisions (a) and (b) of proposed Section 10405.

§ 10410. Fee and expenses

10410. A person receiving instruction from a hunter education instructor shall not be charged a fee for the service provided by the instructor, but may be charged a fee to cover the costs incurred by the instructor in teaching the class. A record of these costs shall be kept for inspection by the department. Costs may include, but are not limited to, range fees, ammunition, and transportation of students.

Comment. Section 10410 continues former Fish and Game Code Section 3052 without change.

§ 10415. Loss or destruction of certificate

10415. In the case of loss or destruction of a certificate of completion, a duplicate certificate may be issued by the instructor who issued the original certificate, or, by an instructor of the sponsoring organization having adequate records to establish successful completion of the course, or by the department if verified by adequate records to establish successful completion of the course. An administrative fee of three dollars (\$3) shall be charged for the issuance of a duplicate certificate, for the hunting license year commencing on July 1, 1990, and, for the following years as adjusted pursuant to Section 3755.

Comment. Section 10415 continues former Fish and Game Code Section 3053 without substantive change.

1 **§ 10420. Material for instructors**

2 10420. The department shall furnish information on hunter safety, principles of
3 conservation, and sportsmanship that shall be distributed free of charge to persons
4 designated as hunter education instructors for instructional purposes.

5 **Comment.** Section 10420 continues former Fish and Game Code Section 3054 without
6 change.

7 **TITLE 4. EXTENDED HUNTING**

8 **§ 10500. Authority of commission**

9 10500. (a) Whenever after due investigation the commission finds that game
10 mammals, other than deer, fur-bearing mammals, or resident game birds have
11 increased in numbers in any area, district, or portion thereof other than a refuge or
12 preserve established by statute, to the extent that a surplus exists, or to the extent
13 that the mammals or birds are damaging public or private property, or are
14 overgrazing their range, the commission may by regulation do any of the
15 following:

16 (1) Provide for a special hunting season for the mammals or birds, additional to,
17 or concurrent with any other open season specified by law.

18 (2) Provide for increased bag limits.

19 (3) Remove sex restrictions specified by law.

20 (4) Establish a license fee for special hunting and designate the number of
21 special licenses to be issued, the area in which the special hunting will be
22 permitted, the number and sex of animals or birds that may be killed by each
23 holder of a special license, and the conditions and regulations to govern the special
24 hunting.

25 (b) Cooperative hunting areas, as described in Section 10700, may be
26 established in connection with any area opened to hunting under the provisions of
27 this title.

28 **Comment.** Paragraphs (1)-(3) of subdivision (a) of Section 10500 continue former Fish and
29 Game Code Section 325 without substantive change.

30 Paragraph (4) of subdivision (a) continues former Fish and Game Code Section 329 without
31 substantive change.

32 Subdivision (b) continues former Fish and Game Code Section 330 without substantive
33 change.

34 **Note.** Existing Section 330, which would be continued by subdivision (b) of proposed Section
35 10500, contains a reference to “cooperative hunting areas, as described in Sections 1570 to
36 1572.” The versions of Sections 1570, 1571, and 1572 that described cooperative hunting areas
37 were repealed in 2003, with the provisions of the repealed sections continued, largely without
38 substantive change, in existing Section 1575. Existing Section 1575 would be continued in the
39 proposed law by proposed Section 10700.

40 **The Commission invites comment on whether the inclusion of a reference to proposed**
41 **Section 10700 in subdivision (b) of proposed Section 10500 is appropriate.**

1 **§ 10505. Required hearing**

2 10505. (a) Before adopting a regulation pursuant to paragraph (1), (2), or (3) of
3 subdivision (a) of Section 10500, the commission at an open meeting shall
4 publicly announce the contents of the proposed regulation, and fix a time and
5 place for a hearing on the proposed regulation in each county that would be
6 affected by the regulation. The time for each hearing shall be at least 21 days after
7 the announcement, and the place shall be the county seat of the affected county.

8 (b) Employees of the department that are necessary or are requested by any
9 interested group of persons, shall be present at a hearing.

10 **Comment.** Subdivision (a) of Section 10505 continues former Fish and Game Code Section
11 326 without substantive change.

12 Subdivision (b) continues the first sentence of former Fish and Game Code Section 328
13 without substantive change.

14 **§ 10510. Notice of hearing**

15 10510. (a) Notice of a hearing held pursuant to Section 10505 shall be published
16 at least once, and at least 10 days prior to the hearing, in a newspaper of general
17 circulation in each of the counties in which a hearing is to be held, or if no
18 newspaper of general circulation is published in that county or counties then in a
19 newspaper of general circulation in an adjoining county. The hearing shall be
20 conducted by either the commission, a member of the commission designated by
21 it, or the director if requested so to do by the commission.

22 (b) At least 10 days prior to the hearing, the commission shall notify each
23 member of the board of supervisors of an affected county, at the member's home
24 address, of the details of the proposed regulation, and the time and date of the
25 hearing.

26 **Comment.** Section 10510 continues former Fish and Game Code Section 327 without
27 substantive change.

28 **§ 10515. Commission decision**

29 10515. After a hearing held pursuant to Section 10505 the commission may
30 abandon the proposed regulation, or may make a final regulation, with any
31 modifications it deems appropriate, or without modification.

32 **Comment.** Section 10515 continues the second sentence of former Fish and Game Code
33 Section 328 without substantive change.

34 **TITLE 5. COMMERCIAL HUNTING CLUB**

35 **§ 10600. Definitions**

36 10600. For purposes of this title, the following terms have the following
37 meanings:

38 (a) "Commercial hunting club" means property with respect to which a fee is
39 imposed or collected for either of the following:

1 (1) Taking or attempting to take birds or mammals on the property.

2 (2) Any type of entry or use permit that includes permission to take birds or
3 mammals on the property.

4 (b) “Property” means a number of contiguous legal parcels owned by one or
5 more owners and held out for a common purpose.

6 **Comment.** Section 10600 continues former Fish and Game Code Section 3240.5(a) without
7 substantive change.

8 **§ 10605. License required**

9 10605. A person, including but not limited to an owner, renter, or lessee, who is
10 in possession or control of a commercial hunting club, shall procure a commercial
11 hunting club license before a bird or mammal may be taken on the property.

12 **Comment.** Section 10605 restates a part of former Fish and Game Code Section 3240.5(b)
13 without substantive change.

14 **§ 10610. Exceptions**

15 10610. (a) This title does not apply under any of the following circumstances:

16 (1) The fees described in subdivision (a) of Section 10600 that are received by
17 the owner, renter or lessee of the property are less than one hundred dollars (\$100)
18 per entrant and total less than one thousand dollars (\$1,000) between July 1 and
19 the following June 30. Pursuant to Section 3755, the department may adjust the
20 threshold amounts established in this paragraph.

21 (2) The property is used in conjunction with the Shared Habitat Alliance for
22 Recreational Enhancement (SHARE) program under Article 3 (commencing with
23 **Section 1570) of Chapter 5 of Division 2.**

24 (3) A domesticated game bird hunting club licensed under Section 29365
25 operates on the property.

26 (4) A domesticated migratory game bird shooting area licensed under Title 2
27 (commencing with Section 26200) of Part 4 operates on the property.

28 (5) The property is used by a hunting club or program licensed under regulations
29 adopted pursuant to this code.

30 (6) The property is used in conjunction with the private wildlife habitat
31 enhancement and management program under **Article 5 (commencing with**
32 **Section 3400).**

33 (7) The property is used for an officially sanctioned field trial event pursuant to
34 regulations adopted pursuant to this code.

35 (8) The property is subject to a recorded state, federal, or nonprofit wildlife
36 conservation or agricultural easement or is enrolled in a habitat protection or
37 enhancement program under this code, including, but not limited to, **Article 7**
38 **(commencing with Section 3460).**

39 (b) This title does not apply to an owner of property that is rented or leased to a
40 commercial hunting club, if the owner is not involved in the operation of the club
41 and the club is licensed in accordance with this title.

1 **Comment.** Section 10610 continues former Fish and Game Code Section 3240.5(c)-(d)
2 without substantive change.

3 **§ 10615. Application for license**

4 10615. (a) An application for a commercial hunting club license shall be
5 submitted on a form furnished by the department. The application, which shall set
6 forth all of the exemptions and conditions established in Sections 10600, 10605,
7 and 10610, shall require the applicant to include all of the following information:

8 (1) The name of the club and the ownership.

9 (2) The business telephone number and mailing address of the club.

10 (3) The number of properties used by the club and the physical location of each
11 property.

12 (4) The total acreage of the club property.

13 (5) A list of all species of game hunted on the club property.

14 (6) Information as to whether the club owner owns any of the properties used by
15 the club.

16 (7) The name and address of each property owner, if the property owner is
17 substantially involved in the operation of the club, but does not own the club.

18 (8) The signature and title of the applicant.

19 (9) Any other information the department may require.

20 (b) The department shall allow a commercial hunting club that leases or rents
21 more than one property for hunting purposes to submit a single application listing
22 each of the properties for which the club is seeking a license, if all of the
23 information required for each property is submitted in a format approved by the
24 department.

25 **Comment.** Section 10615 continues former Fish and Game Code Section 3241 without
26 substantive change.

27 **§ 10620. Fee**

28 10620. (a) The department may issue a commercial hunting club license to any
29 person upon submission of a completed application and payment of the required
30 fee, according to the number of properties used by the club, as follows:

31 (1) The fee for one property shall be two hundred dollars (\$200).

32 (2) The fee for two to five properties shall be five hundred dollars (\$500).

33 (3) The fee for six to 10 properties shall be one thousand dollars (\$1,000).

34 (4) The fee for 11 or more properties shall be two thousand dollars (\$2,000).

35 (b) The fees specified in this section are applicable to the 2010 license year, and
36 shall be adjusted annually thereafter pursuant to Section 3755.

37 **Comment.** Section 10620 continues former Fish and Game Code Section 3242 without
38 substantive change.

39 **§ 10625. Transfer of license**

40 10625. The commission may transfer a commercial hunting club license to other
41 land owned or controlled by the licensee, in the same county as the originally

1 licensed land, without an additional fee, if the commission finds the new land
2 suitable for the purposes of the license and the transfer does not conflict with the
3 public interest.

4 **Comment.** Section 10625 continues former Fish and Game Code Section 3243.5 without
5 change.

6 **§ 10630. Term and authority**

7 10630. A commercial hunting club license is valid for a term of one year from
8 July 1, or, if issued after the beginning of the term, for the remainder of the term.
9 A license authorizes the person to whom it is issued to maintain a hunting club in
10 accordance with the provisions of this code and regulations adopted by the
11 commission.

12 **Comment.** Section 10630 continues former Fish and Game Code Section 3245 without
13 substantive change.

14 **§ 10635. Revocation of license**

15 10635. Any license issued under this title may be revoked by the commission at
16 one of the commission's regularly scheduled meetings, or by a court of competent
17 jurisdiction, upon the licensee's conviction of a violation of this code, and no new
18 license may be issued to the licensee during the same license year.

19 **Comment.** Section 10635 continues former Fish and Game Code Section 3246 without
20 change.

21 **TITLE 6. COOPERATIVE HUNTING AREAS**

22 **§ 10700. Cooperative hunting areas**

23 10700. To provide added protection for landowners from the depredation of
24 trespassers and to provide additional hunting opportunities to public hunters and
25 private landowners, the department may contract with landowners for the
26 establishment of cooperative hunting areas according to terms as the respective
27 parties may agree upon, subject to the following conditions:

28 (a) Cooperative deer and elk hunting areas shall be at least 5,000 acres in size,
29 including the open, restricted, and portions thereof, and may consist of the
30 adjoining lands of one or more owners.

31 (b) The boundaries of each area shall be posted by the department with a sign
32 stating legal hunting may be allowed in the area if written permission is obtained
33 from the owner or the owner's duly authorized agent.

34 (c) The department shall enforce the trespass provisions of the Penal Code and
35 the provisions of this code within these areas.

36 (d) The commission may establish regulations and set fees for the management
37 and control of hunting in these areas.

38 **Comment.** Section 10700 continues former Fish and Game Code Section 1575 without
39 substantive change.

Note. The Commission invites comment on the meaning of the phrase “including the open, restricted, and portions thereof” in subdivision (a) of this section.

TITLE 7. POSSESSION OF BIRDS AND MAMMALS AFTER SEASON

§ 10800. “Donor intermediary” defined

10800. For the purposes of this title, “donor intermediary” means a recipient who receives a game bird, game mammal, or fur-bearing mammal from a donor to give to a charitable organization or charitable entity.

Comment. Section 10800 restates former Fish and Game Code Section 3080(a) to make clear that it applies to game mammals and fur-bearing mammals, rather than all mammals.

Note. Proposed Section 10800 would continue existing Fish and Game Code Section 3080(a) with minor revisions. The revisions would make clear that the section applies to game and fur-bearing mammals, rather than all mammals.

The Commission invites comment on the merits of those revisions.

§ 10805. Possession out of season

10805. A person may possess a game bird, game mammal, or fur-bearing mammal during a period other than the open season for that bird or mammal, up to the possession limit allowed for that bird or mammal during the open season, in any of the following circumstances:

(a) The person possesses a hunting license and a validated tag or tags for the species possessed, or a copy of the license and tag or tags. The license and tag or tags shall have been issued to that person for the current or immediate past license year.

(b) The person is a donor intermediary who received the game bird, game mammal, or fur-bearing mammal from a donor described in paragraph (a), and has a written confirmation of the donation that is signed and dated by the donor, and a photocopy of the donor’s hunting license and the applicable validated tag or tags from the current or immediate past license year.

(c) The person is a donor intermediary who received the game bird, game mammal, or fur-bearing mammal from a donor described in paragraph (a), and has a written confirmation of the donation signed and dated by the donor, which includes the donor’s name, address, hunting license number, and applicable tag numbers for the species possessed. The license and tag or tags shall be for the current or immediate past license year.

Comment. Section 10805 restates former Fish and Game Code Section 3080(b) to make clear that it applies to game mammals and fur-bearing mammals, rather than all mammals.

Note. Proposed Section 10805 would continue existing Fish and Game Code Section 3080(b) with minor revisions. The revisions would make clear that the section applies to game and fur-bearing mammals, rather than all mammals.

The Commission invites comment on the merits of those revisions.


1 **§ 10810. Required documentation**

2 10810. (a) The documentation required by Section 10805 shall be made
3 available to the department as described in Section 8305.

4 (b) There is no required format for the documentation. Any written
5 documentation containing the required information shall be deemed to comply
6 with Section 10805.

7 (c) A charitable organization or charitable entity receiving and distributing a
8 game bird, game mammal, or fur-bearing mammal for a charitable or humane
9 purpose shall maintain the documentation described in subdivisions (b) or (c) of
10 Section 10805 for one year from the date of disposal.

11 **Comment.** Section 10810 continues former Fish and Game Code Section 3080(c) to make
12 clear that it applies to game mammals and fur-bearing mammals, rather than all mammals.

13  **Note.** Proposed Section 10810 would continue existing Fish and Game Code Section 3080(c)
14 with minor revisions. The revisions would make clear that the section applies to game and fur-
15 bearing mammals, rather than all mammals.

16 **The Commission invites comment on the merits of those revisions.**

17 **§ 10815. Exception**


18 10815. This title does not authorize the possession of a game bird contrary to
19 regulations adopted pursuant to the federal Migratory Bird Treaty Act (16 U.S.C.
20 Sec. 703 et seq.).

21 **Comment.** Section 10815 continues former Fish and Game Code Section 3080(d) without
22 substantive change.

23 **§ 10820. Implementing legislation or regulations**

24 10820. On or before January 1, 2015, and subject to the requirements of Section
25 10815, the commission shall recommend legislation or adopt regulations to clarify
26 when a possession limit is not violated by processing into food lawfully taken
27 game birds, game mammals, or fur-bearing mammals.

28 **Comment.** Section 10820 continues former Fish and Game Code Section 3080(e) to make
29 clear that it applies to game mammals and fur-bearing mammals, rather than all mammals.

30  **Note.** Proposed Section 10820 would continue existing Fish and Game Code Section 3080(e)
31 with minor revisions. The revisions would make clear that the section applies to game and fur-
32 bearing mammals, rather than all mammals.

33 **The Commission invites comment on the merits of those revisions.**

34 **§ 10825. Cold storage**

35 10825. Cold storage plants and frozen food locker plants shall make and keep a
36 complete detailed record of all game birds, game mammals, or fur-bearing
37 mammals stored in the plants. A record of each game bird, game mammal, or fur-
38 bearing mammal shall be made at the time it is received at the plant for storage.
39 The record shall be open for inspection at all times by wardens of the department.

40 **Comment.** Section 10825 restates former Fish and Game Code Section 3086 to make clear that
41 it applies to game mammals and fur-bearing mammals, rather than all mammals.

Note. Proposed Section 10825 would continue existing Fish and Game Code Section 3086 with minor revisions. The revisions would make clear that the section applies to game and fur-bearing mammals, rather than all mammals.

The Commission invites comment on the merits of those revisions.

§ 10830. Taxidermy

10830. (a) Every person who prepares, stuffs, or mounts the skin of any fish, reptile, amphibian, bird, or mammal for another person for a fee shall make and keep an accurate and detailed record, as prescribed by regulations of the commission, regarding all fish, reptile, amphibian, bird, or mammal carcasses, skins, or parts thereof that are acquired, possessed, or stored for taxidermy purposes.

(b) The record required by this section shall be made at the time the fish, reptile, amphibian, bird, or mammal carcasses, skins, or parts thereof, are received, and shall include the name and address of each person from and to whom fish, reptile, amphibian, bird, or mammal carcasses, skins, or parts thereof are received or delivered and the number and species of all fish, reptile, amphibian, bird, or mammal carcasses, skins, or parts thereof received or delivered.

(c) The record shall be open for inspection at all times pursuant to regulations adopted by the commission.

(d) Where a taxidermist has prepared, stuffed, or mounted the skin of any fish, reptile, amphibian, bird, or mammal for another person and that person does not pay the cost thereof, or take delivery thereof, the taxidermist may sell the skin only if the commission adopts regulations permitting the sale, as provided in this subdivision.

(1) The commission may adopt regulations permitting a sale pursuant to Chapter 6 (commencing with Section 3046) of Title 14 of Part 4 of Division 3 of the Civil Code, and may adopt any other regulations governing the sale, including, but not limited to, regulations that require a taxidermist to record, and provide to the department, the name and address of any person failing to pay for work performed on a skin, that list species of fish, reptiles, amphibians, birds, or mammals whose prepared skins shall not be sold, and that limit the sales price of prepared skins to the actual cost of preparation.

(2) The commission may adopt regulations permitting a sale of a prepared skin pursuant to this subdivision only if the commission also adopts regulations that require the posting of a notice or otherwise giving notice at the place of business of the taxidermist informing patrons of this subdivision and regulations adopted pursuant to this subdivision.

(e) Upon the second conviction of any person of a violation of this section or any regulation adopted pursuant to this section, in any five-year period, and upon any conviction subsequent to the two convictions during a five-year period, it shall be unlawful for that person to conduct any of the activities described in subdivision (a) for three years from the date of the last conviction.

Comment. Subdivisions (a) through (d) of Section 10830 continue former Fish and Game Code Section 3087 without substantive change.

Subdivision (e) continues former Fish and Game Code Section 12002.11 without substantive change.

PART 3. TRAPPING

TITLE 1. GENERAL PROHIBITIONS AND REQUIREMENTS

CHAPTER 1. GENERAL PROHIBITIONS

§ 11000. Inspection and removal of animals

11000. (a) It is unlawful to fail to visit and remove all animals from traps at least once daily.

(b) If trapping is done pursuant to Section 32155, 32305, 35215, 35610, 35710, or 36010, the inspection and removal shall be done by one of the following:

(1) The person who sets the trap.

(2) The owner of the land where the trap is set.

(3) An agent of a person listed in paragraph (1) or (2).

(c) The punishment for a violation of this section is a fine of not more than two thousand dollars (\$2,000), imprisonment in a county jail for not more than one year, or both the fine and imprisonment.

Comment. Section 11000 restates former Fish and Game Code Section 4004(d) without substantive change.

Note. Proposed Section 11000 is intended to restate existing Fish and Game Code Section 4004(d) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“It is unlawful to do any of the following:

....

(d) Fail to visit and remove all animals from traps at least once daily. If the trapping is done pursuant to Section 4152 or 4180, the inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 11005. Signs warning of conibear traps

11005. (a) When any conibear trap is set on publicly owned land or land expressly open to public use, it is unlawful to fail to post signs at each entrance and exit to the property indicating the presence of conibear traps, and at least four additional signs within a radius of 50 feet of each trap, one in each cardinal direction, with lettering that is a minimum of three inches high stating: “Danger! Traps Set For Wildlife. Keep Out.”

(b) Signs required to be posted by this section shall be maintained and checked daily.

Comment. Section 11005 restates former Fish and Game Code Section 4004(f) without substantive change.

Note. Proposed Section 11005 is intended to restate existing Fish and Game Code Section 4004(f) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“It is unlawful to do any of the following:

....

(f) When any conibear trap is set on publicly owned land or land expressly open to public use, fail to post signs at every entrance and exit to the property indicating the presence of conibear traps and at least four additional signs posted within a radius of 50 feet of the trap, one in each cardinal direction, with lettering that is a minimum of three inches high stating: “Danger! Traps Set For Wildlife. Keep Out.” Signs shall be maintained and checked daily.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 11010. Killing of trapped animal

11010. (a) It is unlawful to kill any trapped mammal by any of the following methods:

(1) Intentional drowning.

(2) Injection with any chemical not sold for the purpose of euthanizing animals.

(3) Thoracic compression, commonly known as chest crushing.

(b) The prohibition in subdivision (a) does not apply to either of the following:

(1) A lawfully set conibear trap that is set partially or wholly submerged in water to trap beaver or muskrat.

(2) A lawfully set colony trap that is set in water to trap muskrat.

Comment. Section 11010 restates former Fish and Game Code Section 4004(g) without substantive change.

Notes. (1) Proposed Section 11010 is intended to restate existing Fish and Game Code Section 4004(g) to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4004. It is unlawful to do any of the following:

....

(g) Kill any trapped mammal in accordance with this section by intentional drowning, injection with any chemical not sold for the purpose of euthanizing animals, or thoracic compression, commonly known as chest crushing. This subdivision shall not be construed to prohibit the use of lawfully set conibear traps set partially or wholly submerged in water for beaver or muskrat or the use of lawfully set colony traps set in water for muskrat.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Section 4004(g) prohibits killing any trapped mammal “in accordance with this section.” In proposed Section 11010, that limiting language has been deleted. The Commission sees no policy reason why the prohibition on killing trapped mammals by certain methods should only apply to mammals that were trapped lawfully.

The Commission invites comment on whether the deletion of that language creates a problem.

(3) Although animals that are trapped are normally mammals, is it intended that this provision not apply to any other type of animal that is trapped, whether intentionally or inadvertently? The Notes that none of the other prohibitions in existing Section 4004 (which would be continued by the other proposed provisions in this chapter) are limited in their scope to mammals.

The Commission invites comment on whether the word “mammal” in proposed Section 11010(a) should be revised to read “animal.”

§ 11015. Removing or disturbing trap

11015. (a) It is unlawful to remove or disturb the trap of any person with a valid trapping license while the trap is being used by the licensee on public land, or on land where the licensee has permission to trap.

(b) Subdivision (a) does not prohibit the removal or disturbance of a trap by an employee of the department engaged in the performance of official duties.

Comment. Section 11015 continues former Fish and Game Code Section 4009 without substantive change.

§ 11020. Unmarked trap

11020. (a) It is unlawful to set or maintain a trap that does not bear a mark as follows:

(1) If set or maintained by a federal, state, county, or city agency, a mark containing the name of that agency.

(2) If set pursuant to Section 32155, 32305, 35215, 35610, 35710, or 36010, an identifying mark as specified by the department.

(3) In all other cases, a number or other identifying mark registered to the department.

(b) No registration fee shall be charged pursuant to this section.

(c) The punishment for a violation of this section is a fine of not more than two thousand dollars (\$2,000), imprisonment in a county jail for not more than one year, or both the fine and imprisonment.

Comment. Subdivisions (a) and (b) of Section 11020 restate former Fish and Game Code Section 4004(c) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 12002(b)(2) without substantive change.

Notes. Proposed Section 11020 is intended to restate existing Fish and Game Code Section 4004(c) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“It is unlawful to do any of the following:

....

(c) Set or maintain traps that do not bear a number or other identifying mark registered to the department or, in the case of a federal, state, county, or city agency, bear the name of that agency, except that traps set pursuant to Section 4152 or 4180 shall bear an identifying mark in a manner specified by the department. No registration fee shall be charged pursuant to this subdivision.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

CHAPTER 2. BODY-GRIPPING TRAPS

§ 11100. Definitions

11100. Notwithstanding Section 430, 435, 460, or 575, for purposes of this article, the following definitions apply:

(a) “Fur-bearing mammal” means any of the following mammals:

- (1) Badger.
- (2) Beaver.
- (3) Cross fox.
- (4) Fisher.
- (5) Gray fox.
- (6) Kit fox.
- (7) Mink.
- (8) Muskrat.
- (9) Pine marten.
- (10) Raccoon.
- (11) Red fox.
- (12) River otter.
- (13) Silver fox.
- (14) Wolverine.

(b) “Game mammal” means any of the following mammals:

- (1) Black and brown or cinnamon bears (genus *Euarctos*).
- (2) Deer (genus *Odocoileus*).
- (3) Elk (genus *Cervus*).
- (4) Jackrabbits and varying hares (genus *Lepus*), cottontails, brush rabbits, pigmy rabbits (genus *Sylvilagus*).
- (5) Mountain lions (genus *Felis*).
- (6) Prong-horned antelope (genus *Antilocapra*).
- (7) Tree squirrels (genus *Sciurus* and *Tamiasciurus*).
- (8) Wild pigs, including feral pigs and European wild boars (genus *Sus*).

(c) “Nongame mammal” means any of the following mammals:

- (1) A mammal occurring naturally in California that is not a game mammal, fully protected mammal, or fur-bearing mammal.
- (2) A house cat (*Felis domesticus*) found within the limits of a fish and game refuge, except if in the residence of its owner or on the grounds adjacent to that residence.

(d) “Protected mammal” means any of the following mammals:

- (1) Bighorn sheep (*Ovis canadensis*), except Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*) as provided by subdivision (b) of Section 35900.
- (2) Guadalupe fur seal (*Arctocephalus townsendi*).
- (3) Mountain lion (genus *Felis*).
- (4) Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*).
- (5) Northern elephant seal (*Mirounga angustirostris*).

- (6) Pacific right whale (*Eubalaena sieboldi*).
- (7) Ring-tailed cat (genus *Bassariscus*).
- (8) Salt-marsh harvest mouse (*Reithrodontomys raviventris*).
- (9) Southern sea otter (*Enhydra lutris nereis*).
- (10) Wolverine (*Gulo luscus*).

Comment. Section 11100 restates former Fish and Game Code Section 3003.1(d) without substantive change.

Note. Existing Fish and Game Code Section 3003.1 is an initiative statute, added to the Fish and Game Code in 1998 by Proposition 4, Section 1. Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be amended or repealed by the Legislature only when expressly permitted by the text of the initiative statute. There is nothing in the text of Proposition 4 that authorizes a subsequent legislative amendment or repeal of Section 3003.1.

However, courts have held that a legislative enactment does not amend an initiative statute for the purposes of Article 2, Section 10(c), unless the enactment “prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010), *Proposition 103 Enforcement Project v. Quackenbush*, 64 Cal. App. 4th 1473, 1486; 76 Cal. Rptr. 2d 342 (1998).

Based on this authority, the office of Legislative Counsel has informally expressed that a repeal and recodification of an initiative statute in a single enactment (as would be effected by the enactment of the proposed law), is permissible under Article 2, Section 10(c), provided that the recodification does not substantively change the meaning of the repealed initiative statute.

Proposed Section 11100 is not intended to substantively change the meaning of existing Section 3003.1(d), but rather is intended to restate the existing provision only to improve its clarity. The existing provision reads as follows:

“3003.1. Notwithstanding Sections 1001, 1002, 4002, 4004, 4007, 4008, 4009.5, 4030, 4034, 4042, 4152, 4180, or 4181:

....

(d) For purposes of this section, fur-bearing mammals, game mammals, nongame mammals, and protected mammals are those mammals so defined by statute on January 1, 1997.”

Because over time it will be increasingly difficult to accurately identify the historical definitions referenced in the existing provision, proposed Section 11100 would replace those references with the text of those historical definitions.

In general, that text is continued verbatim, except for purely stylistic improvements such as the addition of subdivision designations, and alphabetical arrangement. However, one reference in existing Section 3003.1(d) is to a category of mammals identified as “protected mammals,” a term for which there was no statutory definition in the Fish and Game Code in 1997 (nor at the present time).

Proposed Section 11100(d) would replace that reference with a definition of the term that refers to those mammals defined as a “fully protected mammal” in 1997 (see existing Section 4700(b)), and to a mountain lion, which was identified as a “specially protected mammal” in 1997 (see existing Section 4800(a)). The Commission found no other provision in the Fish and Game Code as it existed in 1997 that could reasonably be interpreted as defining a “protected mammal.”

The Commission invites comment on whether the proposed revision of Section 3003.1(d) would substantively change the meaning of that provision, or would for some other reason violate Article 2, Section 10(c) of the California Constitution.

§ 11105. Use of body-gripping trap for recreation or commerce in fur

11105. It is unlawful to use a body-gripping trap for recreation or commerce in fur.

Comment. Section 11105 continues former Fish and Game Code Section 4004(b) without substantive change.

Note. The definition of “body-gripping trap” referenced in existing Fish and Game Code Section 4004(b) is continued as a generally applicable definition in proposed Section 250.

§ 11110. Use of body-gripping trap generally

11110. (a) Notwithstanding Section 1700, subdivision (c) of Section 3360, Section 4400, 4410, subdivision (c) of Section 8130, subdivision (a) of Section 8400, Section 9200, 11000, 11005, 11105, 11010, 11020, 11155, 11220, 11225, 11235, 11300, 11310, 11340, Section 31110, subdivision (a) of Section 32150, Section 32155, 32305, 33520, 33710, subdivision (d) of Section 34055, 35000, 35215, 35610, 35710, 36010, 36015, 37150, subdivision (f) of Section 37355, Section 37360, or subdivision (d) of Section 45700:

(1) It is unlawful to use a body-gripping trap to trap a fur-bearing mammal or nongame mammal for either recreation or commerce in fur.

(2) It is unlawful to buy, sell, barter, or otherwise exchange for profit, or offer to buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined in Section 650, of a fur-bearing mammal or nongame mammal that was trapped in this state with a body-gripping trap.

(3) It is unlawful to use or authorize the use of any steel-jawed leghold trap, padded or otherwise, to capture a game mammal, fur-bearing mammal, nongame mammal, protected mammal, or dog or cat, except as provided in this paragraph. A federal, state, county, or municipal government employee, or that employee’s duly authorized agent, may use or authorize the use of a padded-jaw leghold trap in the extraordinary case in which use of that trap is the only method available to protect human health or safety.

(b) A violation of this section, or any rule or regulation adopted pursuant to this section, is punishable by a fine of not less than three hundred dollars (\$300) or more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. The Legislature may increase, but may not decrease, these penalties.

Comment. Subdivision (a) of Section 11110 restates the first sentence of former Fish and Game Code Section 3003.1(a), subdivision (b), and subdivision (c) without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 12005.5 applicable to former Fish and Game Code Section 3003.1 without substantive change.

Notes. (1) The definition of “body-gripping trap” in existing Fish and Game Code Section 3003.1(b) is continued as a generally applicable definition in proposed Section 250.

(2) Existing Fish and Game Code Sections 3003.1 and 12005.5 are initiative statutes, added to the Fish and Game Code in 1998 by Proposition 4, Section 1. Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be amended or repealed by the Legislature only when expressly permitted by the text of the initiative statute. The only language in the text of Proposition 4 that addresses a subsequent legislative amendment or repeal of either code section is the last sentence of Section 12005.5, which provides, “The Legislature may increase, but may not decrease, these penalties.”

However, courts have held that a legislative enactment does not amend an initiative statute for the purposes of Article 2, Section 10(c), unless the enactment “prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010), *Proposition 103 Enforcement Project v. Quackenbush*, 64 Cal. App. 4th 1473, 1486; 76 Cal. Rptr. 2d 342 (1998).

Based on this authority, the office of Legislative Counsel has informally expressed that a repeal and recodification of an initiative statute in a single enactment (as would be effected by the enactment of the proposed law), is permissible under Article 2, Section 10(c), provided that the recodification does not substantively change the meaning of the repealed initiative statute.

Proposed Section 11110 is not intended to substantively change the meaning of either existing Section 3003.1(a)-(c) or 12005.5, but rather is intended to restate the existing provisions only to improve their clarity. Existing Section 3003.1(a)-(c) reads as follows:

“3003.1. Notwithstanding Sections 1001, 1002, 4002, 4004, 4007, 4008, 4009.5, 4030, 4034, 4042, 4152, 4180, or 4181:

(a) It is unlawful for any person to trap for the purposes of recreation or commerce in fur any fur-bearing mammal or nongame mammal with any body-gripping trap. A body-gripping trap is one that grips the mammal’s body or body part, including, but not limited to, steel-jawed leghold traps, padded-jaw leghold traps, conibear traps, and snares. Cage and box traps, nets, suitcase-type live beaver traps, and common rat and mouse traps shall not be considered body-gripping traps.

(b) It is unlawful for any person to buy, sell, barter, or otherwise exchange for profit, or to offer to buy, sell, barter, or otherwise exchange for profit, the raw fur, as defined by Section 4005, of any fur-bearing mammal or nongame mammal that was trapped in this state, with a body-gripping trap as described in subdivision (a).

(c) It is unlawful for any person, including an employee of the federal, state, county, or municipal government, to use or authorize the use of any steel-jawed leghold trap, padded or otherwise, to capture any game mammal, fur-bearing mammal, nongame mammal, protected mammal, or any dog or cat. The prohibition in this subdivision does not apply to federal, state, county, or municipal government employees or their duly authorized agents in the extraordinary case where the otherwise prohibited padded-jaw leghold trap is the only method available to protect human health or safety.”

Existing Fish and Game Code Section 12005.5 reads as follows:

“Notwithstanding Sections 12000 and 12002, a violation of Section 3003.1 or 3003.2, or any rule or regulation adopted pursuant thereto, is punishable by a fine of not less than three hundred dollars (\$300) or more than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. The Legislature may increase, but may not decrease, these penalties.”

(The portion of this provision applicable to existing Section 3003.2 would be continued a separate provision in the proposed law.)

The Commission invites comment on whether the proposed revision of Section 3003.1(a)-(c) or 12005.5 would substantively change the meaning of any of those provisions, or would violate Article 2, Section 10(c) of the California Constitution for any other reason.

(3) The prohibition in existing Section 3003.1(a) against using a body-gripping trap to trap a fur-bearing mammal or nongame mammal for either recreation or commerce in fur appears to be completely subsumed by a blanket prohibition against use of the same trap, for either of the same purposes, in existing Section 4004(b).

The Commission invites comment on the relationship between existing Section 3003.1(a) and existing Section 4004(b), and whether the two provisions might be merged or reconciled. See also proposed Section 11105 (continuing Section 4004(b)).

(4) In 2002, a federal appellate court in *National Audubon Society, Inc. v. Davis*, 307 F.3d 835 (2002) held that the prohibition in existing Fish and Game Code Section 3003.1(c) (which would be continued by proposed Section 11110(a)(3)) is preempted by (a) the federal Endangered

Species Act of 1973 (16 USCS § 1531 *et seq.*), to the extent that provision prevents federal agencies from protecting species listed pursuant to that act, and (b) the National Wildlife Refuge System Improvement Act of 1997 (16 USCS 668dd *et seq.*), to the extent the provision regulates federal trapping on National Wildlife Refuges within the state.

CHAPTER 3. OTHER TRAPS

§ 11150. Steel-jawed, saw-toothed, or spiked jaw trap

11150. It is unlawful to use a steel-jawed leghold trap, or a trap with saw-toothed or spiked jaws.

Comment. Section 11150 continues former Fish and Game Code Section 4004(a) without substantive change.

Note. Existing Fish and Game Code Section 4004 is located in a chapter entitled “Fur-Bearing Mammals.” However, the prohibitions in the section do not on their face appear to be limited in their application to only those mammals, and existing Section 4 provides that “Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.”

The Commission invites comment as to whether relocation of the prohibitions in Section 4004 as proposed would substantively change the meaning of any provision in Section 4004.

§ 11155. Conibear traps

11155. (a) It is unlawful to use a conibear trap that is larger than 6 inches by 6 inches, unless the trap is partially or wholly submerged in water.

(b) Notwithstanding subdivision (a), a lawfully set conibear trap that is 10 inches by 10 inches or less may be set pursuant to subdivision (g) of Section 465.5 of Title 14 of the California Code of Regulations, unless prohibited by the department as a permit condition.

Comment. Section 11155 restates former Fish and Game Code Section 4004(e) without substantive change.

Note. Proposed Section 11155 is intended to restate existing Fish and Game Code Section 4004(e) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“It is unlawful to do any of the following:

....

(e) Use a conibear trap that is larger than 6 inches by 6 inches, unless partially or wholly submerged in water. Unless prohibited by the department as a permit condition, a lawfully set conibear trap that is 10 inches by 10 inches or less may be set pursuant to subdivision (g) of Section 465.5 of Title 14 of the California Code of Regulations.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

TITLE 2. LICENSES

CHAPTER 1. TRAPPING LICENSE

§ 11200. Required license

11200. (a) Except as otherwise provided in this section, any person who traps fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs of those mammals, is required to obtain a trapping license.

(b) The license requirement imposed by this section does not apply to any of the following:

(1) Fur dealers.

(2) Officers or employees of federal, county, or city agencies or the department, when acting in their official capacities.

(3) Officers or employees of the Department of Food and Agriculture, when acting pursuant to the Food and Agricultural Code pertaining to pests, or when acting pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(4) Structural pest control operators licensed pursuant to Chapter 14 (commencing with Section 8500) of Division 3 of the Business and Professions Code, when trapping rats, mice, voles, moles, or gophers.

(5) Persons and businesses licensed or certified by the Department of Pesticide Regulation pursuant to Chapter 4 (commencing with Section 11701) and Chapter 8 (commencing with Section 12201) of Division 6 of, and Chapter 3.6, (commencing with Section 14151) of Division 7 of, the Food and Agricultural Code, when trapping rats, mice, voles, moles, or gophers.

(6) Persons trapping mammals in accordance with Section 32305, 32155, 35215, 35610, 35710, or 36010, except when providing trapping services for profit.

Comment. Subdivisions (a) and (b)(1) of Section 11200 restate the first sentence of former Fish and Game Code Section 4005(a) without substantive change.

Subdivision (b)(2)-(5) continues former Fish and Game Code Section 4005(e) without substantive change.

Subdivision (b)(6) continues former Fish and Game Code Section 4005(c) without substantive change.

Notes. (1) Proposed Sections 11200(a) and 11200(b)(1) are intended to restate the first sentence of existing Fish and Game Code Section 4005(a) to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“Except as otherwise provided in this section, every person, other than a fur dealer, who traps fur-bearing mammals or nongame mammals, designated by the commission or who sells raw furs of those mammals, shall procure a trapping license.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.


(2) **The Commission invites comment on the meaning of “designated by the commission” in Section 4005(a).**

(3) The definition of “raw fur” in Section 4005(a) is continued by proposed Section 650.

1 **§ 11205. Sale of raw fur**

2 11205. No raw furs taken by persons providing trapping services for profit may
3 be sold.

4 **Comment.** Section 11205 continues former Fish and Game Code Section 4005(d) without
5 change.

6  **Note.** Although existing Section 4005(d) could be read as applying broadly to *all* persons
7 providing trapping services for profit, the provision is oddly placed (in the middle of Section
8 4005) if that is its intended effect. Instead, it may be that the provision is intended to apply only
9 to persons providing trapping services for profit *that are described in existing Section 4005(c)*,
10 the paragraph immediately preceding Section 4005(d).

11 **The Commission invites comment on this issue.**

12 **§ 11210. Standards for license**

13 11210. The department shall develop standards that are necessary to ensure the
14 competence and proficiency of applicants for a trapping license. No person shall
15 be issued a trapping license until passing a test of knowledge and skill in trapping.

16 **Comment.** Section 11210 continues former Fish and Game Code Section 4005(b) without
17 substantive change.

18 **§ 11215. Fee for license**

19 11215. (a) The fee for a trapping license is as follows:

20 (1) For a resident of this state 16 years of age or older, a base fee of forty-five
21 dollars (\$45), adjusted under Section 3755.

22 (2) For a resident of this state under the age of 16 years, a base fee of fifteen
23 dollars (\$15), adjusted under Section 3755.

24 (3) For a nonresident of this state, a base fee of two hundred twenty-five dollars
25 (\$225), adjusted under Section 3755.

26 (b) The commission shall adjust the amount of the fees specified in subdivision
27 (a) as necessary to fully recover, but not exceed, all reasonable administrative and
28 implementation costs of the department and the commission relating to those
29 licenses.

30 **Comment.** Subdivision (a) of Section 11215 continues former Fish and Game Code Section
31 4006(a) without substantive change.

32 Subdivision (b) continues former Fish and Game Code Section 4006(c) without substantive
33 change.

34 **§ 11220. Authorization and term**

35 11220. A trapping license authorizes the licensee to do both of the following:

36 (a) Take fur-bearing mammals and nongame mammals during the open season
37 for those mammals, for a term of one year beginning on July 1, or if the license is
38 issued after the beginning of a term, for the remainder of that term.

39 (b) Sell the raw fur of any animal taken pursuant to subdivision (a).

40 **Comment.** Section 11220 restates former Fish and Game Code Section 4007 without
41 substantive change.

1 **Notes.** (1) Proposed Section 11220 is intended to restate existing Fish and Game Code
2 Section 4007 to improve its clarity, without changing its substantive effect. The existing
3 provision reads as follows:

4 “4007. A trapping license authorizes the person to whom it is issued to take, during the open
5 season, fur-bearing mammals and nongame mammals for a term of one year from July 1st, or if
6 issued after the beginning of such term, for the remainder thereof and to sell the raw fur of any
7 such animal.”

8 **The Commission invites comment on whether the restatement would cause any**
9 **substantive change in the meaning of the provision.**

10 (2) Section 4007 provides that a trapping license authorizes both specified take of specified
11 animals during a specified term, and the sale of raw fur from the animals taken. However, the
12 phrasing of the provision makes it unclear whether the sale of raw fur may also only occur during
13 the specified term.

14 **The Commission invites comment on whether, under Section 4007, a trapper may sell**
15 **raw fur from an animal taken pursuant to a trapping license at any time, or only during the**
16 **period in which the trapping license is valid.**

17 **§ 11225. Statement of prior year’s take**

18 11225. No trapping license shall be issued to any applicant within one year
19 following the expiration of any trapping license previously issued to the applicant,
20 unless the applicant has submitted to the department a sworn statement showing
21 the number of each kind of fur-bearing mammal and nongame mammal taken
22 under the previous license, and the names and addresses of any persons to whom
23 the mammals were shipped or sold.

24 **Comment.** Section 11225 continues former Fish and Game Code Section 4008 without
25 substantive change.

26 **§ 11230. Issuance to nonresident**

27 11230. (a) A trapping license may be issued to a nonresident only if the state in
28 which the nonresident resides provides for issuance of a nonresident trapping
29 license to California residents.

30 (b) A nonresident issued a license under subdivision (a) may take only those
31 species, and may take or possess only that quantity of a species, that a resident of
32 California may take or possess under a nonresident trapping license or permit in
33 the state of residence of that nonresident.

34 **Comment.** Section 11230 continues former Fish and Game Code Section 4006(b) without
35 substantive change.

36 **§ 11235. Commission regulations**

37 11235. The commission may adopt regulations that it determines to be necessary
38 to regulate the taking and sale of fur-bearing mammals or nongame mammals
39 taken under a trapping license.

40 **Comment.** Section 11235 continues former Fish and Game Code Section 4009.5 without
41 substantive change.

1 **§ 11240. Violation by licensee**

2 11240. (a) Any person licensed or required to be licensed pursuant to Section
3 11200 who is convicted of a violation of any provision of Section 11000, 11005,
4 11010, 11015, 11105, 11020, 11150, 11155, 11205, 32150, 32300, or 35210 is
5 prohibited from taking any fur-bearing or nongame mammal in the state for three
6 years from the date of the next regularly scheduled meeting of the commission
7 held at least 30 days after the date of that conviction.

8 (b) The commission shall revoke any trapping license issued to a person
9 prohibited from taking fur-bearing and nongame mammals in the state pursuant to
10 subdivision (a), for the period of prohibition.

11 (c) No person prohibited from taking fur-bearing and nongame mammals in the
12 state shall obtain, or attempt to obtain, a trapping license during a period of
13 prohibition.

14 **Comment.** Section 11240 restates former Fish and Game Code Section 12156 without
15 substantive change.

16 **Notes.** (1) Proposed Section 11240 is intended to restate existing Fish and Game Code
17 Section 12156 to improve its clarity, without changing its substantive effect. The existing
18 provision reads as follows:

19 “12156. No person who is licensed or required to be licensed pursuant to Section 4005 and
20 who is convicted of a violation of any provision of Article 1 (commencing with Section 4000) of
21 Chapter 2 of Part 3 of Division 4 or of Section 4150 shall take any fur-bearing or nongame
22 mammal in the state for three years from the date of the next regularly scheduled meeting of the
23 commission held at least 30 days after the date of that conviction. The commission shall revoke
24 the trapping license of the person who is prohibited from taking fur-bearing and nongame
25 mammals in the state, if the person has one, for the period of prohibition.

26 No person shall obtain, or attempt to obtain, a trapping license during a period of prohibition.”

27 **The Commission invites comment on whether the restatement would cause any**
28 **substantive change in the meaning of the provision.**

29 (2) It is unclear whether the “period of prohibition” referenced in the second paragraph of
30 Section 12156 is intended to be the period of prohibition specified in the first part of the section,
31 or is intended to be *any* “period of prohibition” provided for in the Fish and Game Code. See,
32 e.g., Sections 12150 (prohibition against any taking for five years based on intentional or
33 negligent killing or wounding of human being while hunting), 12151 (same for intentional or
34 negligent killing or wounding of domestic while hunting).

35 The use of an indefinite article in referring to the period of prohibition (“a period of
36 prohibition”), contrasted with the use of a definite article in the sentence immediately preceding
37 (“*the* period of prohibition”), adds to that ambiguity.

38 **The Commission invites comment on the application of the second paragraph of Section**
39 **12156.**

40 CHAPTER 2. FUR DEALER LICENSE

41 **§ 11300. Required license**

42 11300. (a) Any person that buys, sells, trades, or deals in the raw fur of a fur-
43 bearing mammal or a nongame mammal is a fur dealer and is required to obtain a
44 fur dealer license.

(b) No fur dealer license shall be required of a licensed trapper selling raw furs that were lawfully taken, or a domesticated game breeder selling raw furs of animals that the breeder has raised.

Comment. Section 11300 restates former Fish and Game Code Section 4030 without substantive change.

Note. Proposed Section 11300 is intended to restate existing Fish and Game Code Section 4030 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4030. Every person engaging in, carrying on, or conducting wholly or in part the business of buying, selling, trading or dealing in raw furs of fur-bearing mammals or nongame mammals is a fur dealer and shall procure a fur dealer license. No fur dealer license shall be required of a licensed trapper selling raw furs which he has lawfully taken, or a domesticated game breeder selling raw furs of animals which he has raised.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 11305. Fee for license

11305. The fee for a fur dealer license is a base fee of seventy dollars (\$70), adjusted under Section 3755.

Comment. Section 11305 restates former Fish and Game Code Section 4031 without substantive change.

Notes. (1) Proposed Section 11305 is intended to restate existing Fish and Game Code Section 4031 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4031. A revocable fur dealer license shall be issued to any person upon payment of a base fee of seventy dollars (\$70), as adjusted under Section 713.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Section 4031 specifies a fee for a “revocable” fur dealer license. As there appears to be no other provision in the existing code specifying a fee for a *nonrevocable* fur dealer license, this language appears intended as a shorthand manner of both specifying the fee for *any* fur dealer license, and further providing that fur dealer licensees are revocable.

Based on that construction, proposed Section 11305 would delete the “revocable” reference in Section 4031 as superfluous. The revocability of a fur dealer license is addressed in more detail in existing Section 4043 (which would be continued by proposed Section 11355), which appears to be the only provision in the existing Fish and Game Code or implementing regulations addressing the revocability of a fur dealer license.

The Commission invites comment on whether the deletion of the word “revocable” from existing Section 4031 would cause any substantive change in the meaning of the provision.

§ 11310. Authorization and term

11310. A fur dealer license authorizes the licensee to buy, sell, trade, or deal in raw fur of fur-bearing mammals and nongame mammals for a term of one year beginning on July 1, or if the license is issued after the beginning of the term, for the remainder of the term.

Comment. Section 11310 restates former Fish and Game Code Section 4034 without substantive change.

Notes. (1) Proposed Section 11310 is intended to restate existing Fish and Game Code Section 4034 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4034. A fur dealer license authorizes the person to whom it is issued to buy, sell, barter, exchange, or possess raw furs or parts thereof of fur-bearing mammals and nongame mammals for a term of one year from July 1st, or if issued after the beginning of such term, for the remainder thereof.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Proposed Section 11310 would conform the conduct authorized by a fur dealer license to the conduct that is unlawful if a person acts without such a license. Compare existing Fish and Game Code Sections 4030 and 4034.

The Commission invites comment on whether that harmonizing change would cause any problems.

§ 11315. Fur agent license

11315. (a) Any person who is employed by a licensed fur dealer to engage in the business of buying, selling, trading, or dealing in raw furs only on behalf of the fur dealer, and not on the person’s own behalf, is a fur agent.

(b) Except as otherwise provided in this code, it is unlawful to act as a fur agent without a fur agent license.

(c) The fee for a fur agent license is a base fee of thirty-five dollars (\$35), adjusted under Section 3755.

Comment. Subdivisions (a) and (b) of Section 11315 continues former Fish and Game Code Section 4032 without substantive change.

Subdivision (c) restates former Fish and Game Code Section 4033 without substantive change.

Notes. (1) Subdivision (c) of proposed Section 11315 is intended to restate existing Fish and Game Code Section 4033 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4033. A revocable fur agent license shall be issued to any person who is employed by a licensed fur dealer upon payment of a base fee of thirty-five dollars (\$35), as adjusted under Section 713.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Section 4033 specifies a fee for a “revocable” fur agent license. As there appears to be no other provision in the existing code specifying a fee for a *nonrevocable* fur agent license, this language appears intended as a shorthand manner of both specifying the fee for *any* fur agent license, and further providing that fur agent licensees are revocable.

Based on that construction, proposed Section 11315 would delete the “revocable” reference in Section 4033 as superfluous. The revocability of a fur agent license is addressed in more detail in existing Section 4043 (which would be continued by proposed Section 11355), which appears to be the only provision in the existing Fish and Game Code or implementing regulations addressing the revocability of a fur agent license.

The Commission invites comment on whether the deletion of the word “revocable” from existing Section 4033 would cause any substantive change in the meaning of the provision.

1 **§ 11320. Display of license**

2 11320. A fur dealer license or fur agent license shall be shown upon request to
3 any person authorized to enforce the provisions of this code.

4 **Comment.** Section 11320 continues former Fish and Game Code Section 4035 without
5 substantive change.

6 **§ 11325. Record of transfers**

7 11325. (a) A fur dealer licensed pursuant to this chapter shall maintain a true
8 and legible record of any transfer of raw furs that includes:

9 (1) The license number, name, and address of any seller.

10 (2) The signature, name, and license number, if applicable, of any buyer.

11 (3) The number and species of raw furs transferred, by county of take.

12 (4) The price paid or terms of exchange.

13 (5) The date of transfer.

14 (6) Any other information that the department requires.

15 (b) The record of all transfers of raw fur shall be available for inspection at any
16 time by the department.

17 **Comment.** Subdivision (a) of Section 11325 continues former Fish and Game Code Section
18 4037 without substantive change.

19 Subdivision (b) continues former Fish and Game Code Section 4038 without substantive
20 change.

21 **Note.** Although existing Fish and Game Code Section 4038 provides that “the record of “sale,
22 exchange, barter, or gift” shall be available to the department for inspection, the record referenced
23 in Section 4038 appears to be the record of “transfers of raw furs” required by existing Section
24 4037. Proposed Section 11325(b), which continues existing Section 4038, therefore substitutes a
25 reference to a “record of all transfers of raw fur” for the existing reference to “the record of “sale,
26 exchange, barter, or gift.”

27 **The Commission invites comment on whether this substitution may be made in proposed**
28 **Section 11325(b) without substantively changing the meaning of existing Section 4038.**

29 **§ 11330. Annual report**

30 11330. (a) A fur dealer licensed pursuant to this chapter shall submit an annual
31 report to the department on all transfers of raw furs, on forms furnished by the
32 department.

33 (b) A fur dealer license shall not be renewed until the report required by
34 subdivision (a) is received.

35 **Comment.** Section 11330 continues former Fish and Game Code Section 4040 without
36 substantive change.

37 **Note.** Existing Fish and Game Code Section 4040 requires fur dealers to submit an annual
38 report to the department on “the sale, exchange, barter, or gift” of raw furs. However, existing
39 Section 4037 (which would be continued by proposed Section 11325(a)) refers to these processes
40 more generally as “transfers.”

41 **The Commission invites comment on whether the term “transfer” may be appropriately**
42 **substituted for the words “sale, exchange, barter, or gift” in proposed Section 11330.**

1 **§ 11335. Confidentiality of documents**

2 11335. The receipts, records, and reports required by this chapter, and the
3 information contained in those documents, shall be confidential, and the records
4 shall not be public records. Any publication of information in the documents shall
5 preserve the confidentiality of the persons involved.

6 **Comment.** Section 11335 continues former Fish and Game Code Section 4041 without
7 substantive change.

8 **§ 11340. Regulation**


9 11340. The commission may regulate the buying, selling, trading, or dealing in
10 raw fur or part of raw fur of any fur-bearing mammal or nongame mammal under
11 a fur dealer license.

12 **Comment.** Section 11340 continues former Fish and Game Code Section 4042 without
13 substantive change.

14 **§ 11350. Purchase of raw fur from unlicensed person**

15 11350. It shall be unlawful for any fur dealer to purchase the raw fur of any fur-
16 bearing mammal or nongame mammal from any person who does not hold a valid
17 trapping license, fur dealer license, or fur agent license.

18 **Comment.** Section 11350 continues former Fish and Game Code Section 4036 without
19 change.

20  **Note.** Does the prohibition in existing Fish and Game Code Section 4036 also apply to a fur
21 agent?

22 **The Commission invites comment on whether proposed Section 11350 should state that**
23 **applicability.**

24 **§ 11355. Revocation of license**

25 11355. Any license issued under this chapter may be revoked by the commission
26 at one of the commission's regularly scheduled meetings, upon the licensee's
27 conviction of a violation of this chapter.

28 **Comment.** Section 11355 continues former Fish and Game Code Section 4043 without
29 substantive change.

PART 4. FISHING GENERALLY

TITLE 1. GENERAL PROVISIONS

§ 11500. Restriction on take based on human health risk

11500. (a)(1) If the Director of Environmental Health Hazard Assessment, in consultation with the State Public Health Officer, determines, based on thorough and adequate scientific evidence, that any species or subspecies of fish is likely to pose a human health risk from high levels of toxic substances, the Director of Fish and Wildlife may order the closure of any waters or otherwise restrict the taking in state waters of that species.

(2) After the Director of Fish and Wildlife orders the closure of any waters or restricts the taking of any species of fish pursuant to paragraph (1), he or she shall notify the commission and request that the commission schedule a public discussion of the closure or restriction at its next scheduled full commission meeting.

(b)(1) When the Director of Environmental Health Hazard Assessment, in consultation with the State Public Health Officer, determines that a health risk no longer exists, the Director of Environmental Health Hazard Assessment shall notify the Director of Fish and Wildlife and shall request that any waters closed pursuant to subdivision (a) be reopened for fishing and any restrictions imposed pursuant to subdivision (a) be lifted.

(2) Upon receiving the notification and request pursuant to paragraph (1), the Director of Fish and Wildlife shall open any waters closed pursuant to subdivision (a) and lift any restrictions imposed pursuant to subdivision (a) in a manner that promotes a fair and orderly fishery.

(c) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to actions taken pursuant to this section.

Comment. Section 11500 continues former Fish and Game Code Section 5523 without substantive change.

§ 11505. Take from propagation or conservation facilities

11505. It is unlawful to take a fish in a pond, reservoir, or other water-retaining structure that belongs to or is controlled by the department and used for propagating, raising, holding, protecting, or conserving fish.

Comment. Section 11505 continues former Fish and Game Code Section 1124 without substantive change.

§ 11510. Fish spear or gaff

11510. (a) It is unlawful for a person to possess a fish spear or gaff within 300 feet of a lake or stream in this state, at a time when spearing is prohibited in that lake or stream.

(b) This section does not apply to either of the following acts:

(1) Possession of a gaff carried as an accessory while angling.

(2) Possession of a fish spear or gaff in one's own home.

Comment. Section 11510 restates former Fish and Game Code Section 5507 without substantive change.

Note. Proposed Section 11510 is intended to restate existing Fish and Game Code Section 5507 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“5507. It is unlawful for any person to possess, except in his home, any fish spear or gaff within 300 feet of any lake or stream in this State, at any time when spearing is prohibited in such lake or stream. This section does not apply to the possession of a gaff carried as an accessory while angling.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 11515. Possession when size or weight cannot be determined

11515. (a) It is unlawful to possess on a boat, or to bring ashore, a fish for which a size or weight limit is prescribed, in such a condition that its size or weight cannot be determined.

(b) The commission may adopt regulations allowing fish other than whole fish to be brought ashore, which establish sizes or weights for cleaned or otherwise cut fish equivalent to sizes or weights for whole fish.

Comment. Section 11515 continues former Fish and Game Code Section 5508 without substantive change.

§ 11520. Possession when species cannot be determined

11520. (a) It is unlawful to possess on a boat, or to bring ashore, a fish in such a condition that its species cannot be determined, except as otherwise provided in this code or regulations adopted pursuant to this code.

(b) Subject to Section 11515, the commission may adopt regulations allowing fish taken by a person fishing from a vessel licensed pursuant to Section 21905 to be brought ashore in such a condition that its species cannot be determined.

Comment. Section 11520 continues former Fish and Game Code Section 5509 without substantive change.

§ 11525. Removal of eggs

11525. (a) It is unlawful to take any fish for the sole purpose of removing its eggs, except for the purpose of developing a brood stock for aquaculture purposes under Part 1 (commencing with Section 23300) of Division 7 pursuant to regulations adopted by the Fish and Game Commission.

(b) The commission shall determine ownership and regulate distribution of progeny taken from wild brood stock, other than those obtained pursuant to Section 23900.

1 **Comment.** Section 11525 continues former Fish and Game Code Section 5503 without
2 substantive change.

3 **§ 11530. Mollusks, crustaceans, and amphibians as bait**

4 11530. Mollusks, crustaceans, and amphibians may be used for bait, or may be
5 released in waters from which they were taken.

6 **Comment.** Section 11530 continues former Fish and Game Code Section 5505 without
7 substantive change.

8 **§ 11535. Use of artificial bait**

9 11535. A river, stream, lake, or other body of water restricted by the
10 commission to the use of only artificial flies or artificial lures for fishing shall be
11 posted by the department at logical places of entry so as to inform persons fishing
12 in those waters as to the nature of the restrictions.

13 **Comment.** Section 11535 continues former Fish and Game Code Section 5516 without
14 substantive change.

15 **§ 11540. Predatory fish**

16 11540. The department may take any fish that, in its opinion, is unduly preying
17 upon any bird, mammal, or fish. The commission may prescribe the terms of a
18 permit to take any fish that, in the opinion of the department, is harmful to other
19 species of fish and should be reduced in numbers.

20 **Comment.** Section 11540 continues former Fish and Game Code Section 5501 without
21 substantive change.

22 **TITLE 2. FISHERIES GENERALLY**

23 **CHAPTER 1. TROUT AND STEELHEAD CONSERVATION AND MANAGEMENT**
24 **PLANNING ACT OF 1979**

25 **§ 11700. Name of act**

26 11700. This act shall be known as the Trout and Steelhead Conservation and
27 Management Planning Act of 1979.

28 **Comment.** Section 11700 continues former Fish and Game Code Section 1725 without
29 change.

30 **§ 11705. Declaration of policy**

31 11705. The Legislature hereby finds and declares that it is the policy of the state
32 to do all of the following:

33 (a) Establish and maintain wild trout stocks that, to the extent possible, should
34 be native fish, in suitable waters of the state that are readily accessible to the
35 general public as well as in those waters in remote areas.

1 (b) Establish angling regulations designed to maintain the wild trout fishery in
2 those waters by natural reproduction.

3 (c) Discourage artificial planting of hatchery-raised hybrid and nonnative fish
4 species in wild trout waters or in other areas that would adversely affect native
5 aquatic and nonaquatic species.

6 **Comment.** Section 11705 continues former Fish and Game Code Section 1726 without
7 change.

8 **§ 11710. Declaration of need**

9 11710. The Legislature further finds and declares all of the following:

10 (a) Hatchery production and stocking of California's waters started over 140
11 years ago and is an enduring part of California's history and attempts to steward
12 its natural resources.

13 (b) Sustainable and adaptive management provides and improves recreational
14 angling opportunities while protecting and maintaining native and wild trout
15 fisheries, other species, and their mutual habitat.

16 (c) Management of the genetic diversity of California's native trout species is
17 imperative.

18 (d) Habitat restoration and the protection of cold water ecosystems are both of
19 utmost importance to maintaining healthy wild trout populations, ensuring and
20 promoting angler opportunities, and the sustainability of the inland trout fishery.

21 (e) The department shall seek to provide and enhance diverse recreational
22 angling opportunities in California.

23 **Comment.** Section 11710 continues former Fish and Game Code Section 1726.1 without
24 change.

25 **§ 11715. Determinations by department**

26 11715. (a) For the purposes of this chapter, "trout" includes steelhead trout.

27 (b) The department, in administering its existing wild trout program, shall
28 maintain an inventory of all California trout streams and lakes to determine the
29 most suitable angling regulations for each stream or lake. The department shall
30 determine for each stream or lake whether it should be managed as a wild trout
31 fishery, or whether its management should involve the temporary planting of
32 native trout species to supplement wild trout populations that is consistent with
33 this chapter. In maintaining the inventory, the department shall give priority to
34 those streams and lakes that have the highest biological potential for producing
35 sizeable wild trout, which are inhabited by rare species, or where the quality of the
36 fishery is threatened or endangered and take into consideration public use. The
37 biological and physical inventories prepared and maintained for each stream,
38 stream system, or lake shall include an assessment of the resource status, threats to
39 the continued well-being of the fishery resource, the potential for fishery resource
40 development, and recommendations, including necessary changes in the allowed

1 take of trout, for the development of each stream or lake to its full capacity as a
2 fishery, consistent with this chapter.

3 (c) This section does not provide any public entity or private party with any new
4 or additional authority to affect the management of, or access to, any private land
5 without the written consent of the owner. Privately owned lakes and ponds not
6 open to the use of the general public shall be subject to this section only with the
7 written consent of the owner. This chapter shall not be construed as authorizing or
8 requiring special treatment of adjacent land areas or requiring land use restrictions.
9 It is the intent of the Legislature that this chapter should not diminish the existing
10 authority of the department.

11 (d) The department shall make the inventory maintained pursuant to subdivision
12 (b) publicly available on the department's Internet Web site and the department
13 shall continuously revise that inventory with the goal of reviewing every
14 watershed once per decade.

15 **Comment.** Section 11715 continues former Fish and Game Code Section 1726.4 without
16 change.

17 **§ 11720. Declaration regarding funding**

18 11720. The Legislature further finds and declares that activities and programs
19 mandated by this chapter are a continuation and perpetuation of the department's
20 existing wild trout program and other programs, and as such they shall be funded
21 from existing budgetary resources.

22 **Comment.** Section 11720 continues former Fish and Game Code Section 1726.5 without
23 change.

24 **§ 11725. Declaration of intended development**

25 11725. (a) In order to provide for a diversity of available angling experiences
26 throughout the state, it is the intent of the Legislature that the commission
27 maintain the existing wild trout program, and as part of the program, develop
28 additional wild trout waters in the more than 20,000 miles of trout streams and
29 approximately 5,000 lakes containing trout in California.

30 (b) The department shall prepare a list of no less than 25 miles of stream or
31 stream segments and at least one lake that it deems suitable for designation as wild
32 trout waters. The department shall submit this list to the commission for its
33 consideration at the regular October commission meeting.

34 (c) The commission may remove any stream or lake that it has designated as a
35 wild trout fishery from the program at any time. If any of those waters are
36 removed from the program, an equivalent amount of stream mileage or an
37 equivalent size lake shall be added to the wild trout program.

38 (d) The department shall prepare and complete management plans for all wild
39 trout waters not more than three years following their initial designation by the
40 commission and update the management plan every five years following
41 completion of the initial management plan.

1 **Comment.** Section 11725 continues former Fish and Game Code Section 1727 without
2 change.

3 **§ 11730. Update of trout management plan**

4 11730. (a) Every five years the department shall update the Strategic Plan for
5 Trout Management published in November 2003 as necessary to guide the state's
6 trout management.

7 (b) The Strategic Plan for Trout Management shall be intended to ensure all of
8 the following:

9 (1) Thriving and self-sustaining, wild and native trout populations throughout
10 their historic ranges.

11 (2) Providing and improving angling opportunities for wild and native trout and
12 other trout.

13 (3) Providing for the conservation of wild and native trout.

14 (4) Environmental sustainability and overall ecosystem and watershed health.

15 (c) The Strategic Plan for Trout Management shall be guided by all of the
16 following considerations:

17 (1) Adaptively managing trout populations, including, but not limited to,
18 stocking practices, to establish thriving and self-sustaining native and wild trout
19 fisheries in wild trout waters and, where possible, in other waters.

20 (2) Increasing angler satisfaction.

21 (3) Ensuring appropriate age distribution of wild trout when appropriate.

22 (4) Establishing ecologically and environmentally sustainable hatchery and
23 stocking practices for native trout, including, but not limited to, the following:

24 (A) Hatchery and stocking practices consistent with this chapter.

25 (B) Stocking plans shall include consideration of angler satisfaction and public
26 use of, and access to, the waters for angling. This may include, but is not limited
27 to, harvest and catch rates, including, but not limited to, trophy catch rates, the
28 potential for high angler satisfaction, and where appropriate, put and grow
29 stocking.

30 (C) Native trout shall be preferentially stocked when stocking is employed.

31 (D) Designing stocking plans to maintain and optimize the genetic diversity of
32 trout populations and to be consistent with the direction provided by the strategic
33 trout management team.

34 (E) Stocking plans for species listed in Section 555 shall not exceed the
35 documented biological carrying capacity of the water or ecosystem.

36 (5) Integrating stakeholder involvement into the planning process.

37 (6) Monitoring and evaluating management processes through angler surveys,
38 public meetings coordinated with county fish and game commissions, or by other
39 means.

40 (d) The department shall prepare and complete trout management plans
41 consistent with the Strategic Plan for Trout Management for all wild trout waters
42 not more than three years following their initial designation by the commission.

1 The department shall update the management plan every five years or as necessary
2 following completion of the initial management plan. The department shall
3 prepare trout management plans for other waters consistent with the Strategic Plan
4 for Trout Management as appropriate.

5 (e) Before implementation, the Strategic Plan for Trout Management produced
6 by the department shall be reviewed by the strategic trout management team, the
7 hatchery operations committee, and an ad hoc peer review committee convened by
8 the department to ensure compliance with sound management practices, improved
9 genetic diversity, and use of the best available scientific information.

10 (f) The Strategic Plan for Trout Management and plans completed pursuant to
11 subdivision (d) shall be publicly available on the department's Internet Web site.

12 **Comment.** Section 11730 continues former Fish and Game Code Section 1728 without
13 change.

14 **§ 11735. Priority for stocking native hatchery-produced species**

15 11735. (a) The department shall give priority to stocking native hatchery-
16 produced species in California's waters, where stocking is determined to be
17 appropriate by the department. Stocking of hatchery-produced fish is not
18 appropriate in all of California's waters, including, but not limited to, stocking in
19 California's waters that would adversely affect species listed under the federal
20 Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or the California
21 Endangered Species Act (**Chapter 1.5 (commencing with Section 2050) of**
22 **Division 3**).

23 (b) Hatchery-produced trout shall be stocked to support sustainable angling
24 recreation and promote angler access to trout fishing, including, but not limited to,
25 urban fisheries.

26 (c) The department may provide outreach and educational materials to all
27 anglers to promote awareness of environmental sustainability, ecosystem health,
28 fish genetics, angling opportunities, and fish population management.

29 (d) Educational programs utilizing the hatcheries shall be encouraged.

30 (e) The department shall ensure that all trout stocked in waters of the state for
31 recreational purposes are unable to reproduce through triploidy or other means,
32 with the exception of fish planted into brood stock lakes, surplus brood stock
33 planted according to fishery management decisions, fish planted to supplement
34 waters that the department has determined to be genetically isolated from native
35 fish populations, and native trout species produced for recovery and restoration
36 within their native range.

37 (f) The department may develop, conduct, and respond to regular angler
38 preference and satisfaction surveys. This is not a substitute for a preferred
39 scientific data collection and monitoring program that would facilitate adaptive
40 management of California's inland trout fisheries.

(g) The department shall review angling regulations periodically and adjust those regulations to ensure consistency with the strategic plan described in Section 11730.

Comment. Section 11735 continues former Fish and Game Code Section 1729 without substantive change.

§ 11740. Intradepartmental strategic trout management team

11740. (a) By January 1, 2014, the department shall form an intradepartmental strategic trout management team to provide direction and oversee trout management statewide. Working under the framework of the Strategic Plan for Trout Management, the strategic trout management team shall direct and implement focused management and monitoring efforts for trout at the watershed level, in cooperation with local stakeholders.

(b) The strategic trout management team shall be responsible for developing basin management plans that are conservation based and are consistent throughout California for inland watersheds.

(c) The basin plans in subdivision (b) shall be reviewed by an ad hoc peer review committee, which may be convened under the guidance of the department's Science Institute to ensure compliance with sound management practices and utilization of the best available scientific information.

Comment. Section 11740 continues former Fish and Game Code Section 1730 without change.

CHAPTER 2. SALMON, STEELHEAD TROUT, AND ANADROMOUS
FISHERIES PROGRAM ACT

§ 11800. Title

11800. This chapter shall be known and may be cited as the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act.

Comment. Section 11800 continues former Fish and Game Code Section 6900 without change.

§ 11805. Definitions

11805. Unless the context clearly requires a different meaning, the following definitions govern the construction of this chapter:

(a) "Production" means the survival of fish to adulthood as measured by the abundance of the recreational and commercial catch together with the return of fish to the state's spawning streams.

(b) "Program" means the program for protecting and increasing the naturally spawning salmon and steelhead trout of the state provided for in Section 11825.

Comment. Subdivision (a) of Section 11805 combines and continues former Fish and Game Code Sections 6910 and 6911 without substantive change.

Subdivision (b) combines and continues former Fish and Game Code Sections 6910 and 6912 without substantive change.

1 **§ 11810. Legislative findings**

2 11810. The Legislature, for purposes of this chapter, finds as follows:

3 (a) According to the department, the natural production of salmon and steelhead
4 trout in California has declined to approximately 1,000,000 adult chinook or king
5 salmon, 100,000 coho or silver salmon, and 150,000 steelhead trout.

6 (b) The naturally spawning salmon and steelhead trout resources of the state
7 have declined dramatically within the past four decades, primarily as a result of
8 lost stream habitat on many streams in the state.

9 (c) Much of the loss of salmon and steelhead trout and anadromous fish in the
10 state has occurred in the central valley.

11 (d) Protection of, and an increase in, the naturally spawning salmon and
12 steelhead trout resources of the state would provide a valuable public resource to
13 the residents, a large statewide economic benefit, and would, in addition, provide
14 employment opportunities not otherwise available to the citizens of this state,
15 particularly in rural areas of present underemployment.

16 (e) Proper salmon and steelhead trout resource management requires
17 maintaining adequate levels of natural, as compared to hatchery, spawning and
18 rearing.

19 (f) Reliance upon hatchery production of salmon and steelhead trout in
20 California is at or near the maximum percentage that it should occupy in the mix
21 of natural and artificial hatchery production in the state. Hatchery production may
22 be an appropriate means of protecting and increasing salmon and steelhead in
23 specific situations; however, when both are feasible alternatives, preference shall
24 be given to natural production.

25 (g) The protection of, and increase in, the naturally spawning salmon and
26 steelhead trout of the state must be accomplished primarily through the
27 improvement of stream habitat.

28 (h) Funds provided by the Legislature since 1978 to further the protection and
29 increase of the fisheries of the state have been administered by the department in a
30 successful program of contracts with local government and nonprofit agencies and
31 private groups in ways that have attracted substantial citizen effort.

32 (i) The department's contract program has demonstrated that California has a
33 large and enthusiastic corps of citizens that are eager to further the restoration of
34 the stream and fishery resources of this state and that are willing to provide
35 significant amounts of time and labor to that purpose.

36 (j) There is need for a comprehensive salmon, steelhead trout, and anadromous
37 fisheries plan, program, and state government organization to guide the state's
38 efforts to protect and increase the naturally spawning salmon, steelhead trout, and
39 anadromous fishery resources of the state.

40 **Comment.** Section 11810 continues former Fish and Game Code Section 6901 without
41 change.

1 **§ 11815. Legislative policy declarations**

2 11815. The Legislature, for purposes of this chapter, declares as follows:

3 (a) It is the policy of the state to significantly increase the natural production of
4 salmon and steelhead trout by the end of this century. The department shall
5 develop a plan and a program that strives to double the current natural production
6 of salmon and steelhead trout resources.

7 (b) It is the policy of the state to recognize and encourage the participation of the
8 public in privately and publicly funded mitigation, restoration, and enhancement
9 programs in order to protect and increase naturally spawning salmon and steelhead
10 trout resources.

11 (c) It is the policy of the state that existing natural salmon and steelhead trout
12 habitat shall not be diminished further without offsetting the impacts of the lost
13 habitat.

14 **Comment.** Section 11815 continues former Fish and Game Code Section 6902 without
15 change.

16 **§ 11820. Nonprofit salmon release and return operations**

17 11820. (a) It is the policy of the state and the department to encourage nonprofit
18 salmon release and return operations subject to this code operated by, or on behalf
19 of, licensed commercial salmon fishermen for the purpose of enhancing
20 California's salmon populations and increasing the salmon harvest by commercial
21 and recreational fishermen.

22 (b) The department shall, to the extent that funds and personnel are available,
23 cooperate with fishing organizations in the siting and establishment of those
24 operations to ensure the protection of natural spawning stocks of native salmon.
25 The organizations conducting the operations may receive salmon eggs and
26 juvenile salmon for the purposes of the operation, and, where appropriate, shall
27 have priority to receive salmon eggs and juvenile salmon for those purposes after
28 the needs of habitat mitigation efforts, and state hatcheries are met.

29 **Comment.** Section 11820 continues former Fish and Game Code Section 6903 without
30 substantive change.

31 **§ 11825. Creation of program**

32 11825. (a) The department shall, with the advice of the Advisory Committee on
33 Salmon and Steelhead Trout and the Commercial Salmon Trollers Advisory
34 Committee, prepare and maintain a detailed and comprehensive program for the
35 protection and increase of salmon, steelhead trout, and anadromous fisheries.

36 (b) The program shall identify the measures the department will carry out to
37 achieve the policies set forth in Section 11815.

38 **Comment.** Subdivision (a) of Section 11825 continues former Fish and Game Code Section
39 6920(a) without change.

40 Subdivision (b) continues former Fish and Game Code Section 6921 without substantive
41 change.

1 **§ 11830. Consultation with other agencies**

2 11830. The department shall consult with every public agency whose policies or
3 decisions may affect the goals of this program to determine if there are feasible
4 means for those public agencies to help the department achieve the goals of this
5 program.

6 **Comment.** Section 11830 continues former Fish and Game Code Section 6920(b) without
7 change.

8 **§ 11835. Report of determined elements of program**

9 11835. The department shall determine the initial elements of the program and
10 transmit a report describing those elements to the Legislature and the Advisory
11 Committee on Salmon and Steelhead Trout by March 31, 1989.

12 **Comment.** Section 11835 continues former Fish and Game Code Section 6924 without
13 change.

14 **Note.** Existing Fish and Game Code Section 6924 (which would be continued by proposed
15 Section 11835) requires the Department to take specified actions within six months of the
16 effective date of the chapter in which Section 6924 appears (Chapter 8 (commencing with Section
17 6900) of Part 1 of Division 6 of the existing code).

18 The effective date of that chapter (added by 1988 Cal. Stat. ch. 1545) was January 1, 1989,
19 suggesting the strong likelihood that the Department has long ago complied with the one-time
20 requirements of Section 6924.

21 **The Commission invites comment on whether existing Section 6924 can be discontinued**
22 **from the proposed law as obsolete.**

23 **§ 11840. Ineligibility**

24 11840. Measures that are the responsibility of other agencies or persons, such as
25 the repair or replacement of dysfunctional fish screens, are not eligible for funding
26 under the program.

27 **Comment.** Section 11840 continues former Fish and Game Code Section 6923 without
28 substantive change.

29 **§ 11845. Program elements**

30 11845. The program shall include, but is not limited to, all of the following
31 elements:

32 (a) Identification of streams where the natural production of salmon and
33 steelhead trout can be increased primarily through the improvement of stream and
34 streambank conditions without effect on land ownership, land use practices, or
35 changes in streamflow operations.

36 (b) Identification of streams where the natural production of salmon and
37 steelhead trout can be increased only through the improvement of land use
38 practices or changes in streamflow operations.

39 (c) Identification of streams where the protection of, and increase in, salmon and
40 steelhead trout resources require, as a result of significant prior loss of stream
41 habitat, the construction of artificial propagation facilities.

42 (d) A program element for evaluating the effectiveness of the program.

(e) Recommendations for an organizational structure, staffing, budgeting, long-term sources of funding, changes in state statutes and regulations and federal and local government policy and such other administrative and legislative actions as the department finds to be necessary to accomplish the purposes of this chapter.

(f) Identification of measures to protect and increase the production of other anadromous fisheries consistent with policies set forth in Section 11815.

(g) Identification of alternatives to, or mitigation of, manmade factors that cause the loss of juvenile and adult fish in California's stream system.

Comment. Section 11845 continues former Fish and Game Code Section 6922 without substantive change.

§ 11850. Study of effect of reduced flow

11850. (a) Subject to the availability of funds for the purposes of this section, the department shall contract with the University of California to conduct a study of the effects that reduced waterflows at the mouths and upstream estuaries of rivers selected under subdivision (b) would have on existing salmon and steelhead populations, and on existing or prospective salmon and steelhead population restoration or reintroduction programs.

(b) The department shall select the rivers to be included in the study, and shall limit its selection to rivers that satisfy both of the following conditions:

(1) The river is within the combined river systems described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code.

(2) The river is the subject of an application filed with the State Water Resources Control Board to appropriate water in an amount equal to more than three cubic feet per second or more than 500 acre feet per annum of storage, involving the delivery of water by means other than a pipeline, natural watercourse, well, or aqueduct, to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code.

(c) The findings of the study conducted under this section shall be a factor in any decision of the State Water Resources Control Board to approve or deny an application to appropriate water from any river selected under this section. If the application involves the delivery of water, by means other than a pipeline, natural watercourse, well, or aqueduct, to any place of use outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, the board may not approve that application until after the study has been completed.

(d) Any study conducted pursuant to this section shall conclude within five years of the start of that study.

(e) This section applies to the University of California only if the Regents of the University of California, by resolution, make it applicable to the university.

Comment. Section 11850 continues former Fish and Game Code Section 6930 without substantive change.

1 CHAPTER 3. KEENE-NIELSEN FISHERIES RESTORATION ACT OF 1985

2 § 11900. Title

3 11900. This chapter shall be known and may be cited as the Keene-Nielsen
4 Fisheries Restoration Act of 1985.

5 **Comment.** Section 11900 continues former Fish and Game Code Section 2760 without
6 change.

7 § 11905. Legislative findings and declarations

8 11905. The Legislature finds and declares as follows:

9 (a) Many of California's significant fish and wildlife resources in inland and
10 coastal waters have declined as the result of many development projects which
11 have provided valuable economic growth.

12 (b) Fish and wildlife have been adversely affected by water developments that
13 have significantly altered water flows in many of California's rivers and streams,
14 thereby affecting fish and wildlife, their habitat, adjacent riparian habitat,
15 spawning areas, and migration routes.

16 (c) Fish and wildlife are important public resources with significant economical,
17 environmental, recreational, aesthetic, and educational values.

18 (d) California intends to make reasonable efforts to prevent further declines in
19 fish and wildlife, to restore fish and wildlife to historic levels where possible, and
20 to enhance fish and wildlife resources where possible.

21 (e) Protection of, and an increase in, the naturally spawning salmon and
22 steelhead trout resources of the state would provide a valuable public resource to
23 the residents, a large statewide economic benefit, and would, in addition, provide
24 employment opportunities not otherwise available to the citizens of this state,
25 particularly in rural areas of underemployment.

26 (f) The protection of, and increase in, the naturally spawning salmon and
27 steelhead trout resources of the state should be accomplished primarily through the
28 improvement of stream habitat.

29 (g) The Salmon, Steelhead Trout, and Anadromous Fisheries Program Act
30 (Chapter 2 (commencing with Sec. 11800)), declares that it is the policy of the
31 state to increase the state's salmon and steelhead trout resources, and directs the
32 department to develop a plan and program that strives to double the salmon and
33 steelhead trout resources.

34 **Comment.** Section 11905 continues former Fish and Game Code Section 2761 without
35 substantive change.

36 § 11910. Fisheries Restoration Account

37 11910. (a) The Fisheries Restoration Account is hereby created in the Fish and
38 Game Preservation Fund. The moneys in the Fisheries Restoration Account are
39 hereby appropriated to the department for expenditure in fiscal years 1991–92 to
40 1993–94, inclusive, pursuant to subdivision (b).

1 (b) The moneys in the Fisheries Restoration Account may be expended for the
2 construction, operation, and administration of projects designated in the plan
3 developed by the department in accordance with the Salmon, Steelhead Trout, and
4 Anadromous Fisheries Program Act (Chapter 2 (commencing with Sec. 11800)),
5 and projects designed to restore and maintain fishery resources and their habitat
6 that have been damaged by past water diversions and projects and other
7 development activities. Expenditures shall not be authorized for a project to be
8 funded under this subdivision before a date that is 30 days after the department has
9 furnished a copy of the proposal for the project to be funded, together with
10 supporting descriptions, to the Joint Committee on Fisheries and Aquaculture and
11 to the Joint Legislative Budget Committee. These projects shall have as their
12 primary objective the restoration of fishery resources identified in the Salmon,
13 Steelhead Trout, and Anadromous Fisheries Program Act. Projects may include,
14 but shall not be limited to, watershed assessments, fisheries restoration planning,
15 acquisition of lands, restoration of habitat, restoration or creation of spawning
16 areas, construction of fish screens or fish ladders, stream rehabilitation, and
17 installation of pollution control facilities. Projects for restoration or creation of
18 spawning areas shall utilize natural spawning rather than hatcheries to the extent
19 possible.

20 Under no circumstances shall any water project be absolved under this
21 subdivision of any mitigation requirements that are placed upon it under existing
22 law.

23 No land shall be acquired pursuant to this chapter by eminent domain
24 proceedings.

25 (c) Priority for funding shall be given to projects that employ fishermen, fish
26 processing workers, and others who are unemployed or underemployed due to the
27 elimination of a commercial fishing season as a result of restrictions imposed by
28 federal regulations. This priority shall remain in effect only as long as those
29 restrictions are in force.

30 (d) Expenditures shall not be authorized for multiyear projects funded under
31 subdivision (b) before a date that is 30 days after the department has submitted an
32 annual progress report on the project and a copy of the work schedule for
33 subsequent year funding of the project to the Joint Committee on Fisheries and
34 Aquaculture and to the Joint Legislative Budget Committee.

35 (e) The department shall conduct a preproject and postproject evaluation on each
36 project recommended in the plan and program developed by the department in
37 accordance with the Salmon, Steelhead Trout, and Anadromous Fisheries Program
38 Act for which money has been appropriated from the Fisheries Restoration
39 Account.

40 (f) The department may expend not more than 5 percent of the funds annually
41 appropriated from the Fisheries Restoration Account for the administration of
42 projects.

(g) The department may contract for services for the purpose of conducting a preproject and postproject evaluation or for the administration of projects.

(h) The department shall, during the last fiscal year of funding, conduct a review of all previous and ongoing projects to determine if the elements of the plan and program developed by the department pursuant to the Salmon, Steelhead Trout, and Anadromous Fisheries Program Act are being met, including the goal of doubling the 1988 population of salmon and steelhead trout, as declared in Section 11815.

Comment. Section 11910 continues former Fish and Game Code Section 2762 without change.

§ 11915. Partial funding of projects

11915. The department may advance partial finding, of up to 50 percent of the amount contracted for, to contractors for projects under subdivision (b) of Section 11910 if the director finds the organization meets all of the following requirements:

(1) It has a previously demonstrated record of successfully completing one or more fishery restoration projects funded under contract with the department.

(2) It utilizes generally accepted accounting procedures.

(3) It demonstrates that the project can be accomplished more efficiently and economically with partial funding advanced at the initiation of the project.

Comment. Section 11915 continues former Fish and Game Code Section 2762.2 without change.

§ 11920. Administrative costs of Advisory Committee on Salmon and Steelhead Trout

11920. In addition to subdivision (b) of Section 11910, the moneys in the Fisheries Restoration Account may be expended, upon appropriation by the Legislature, by the department to fund the administrative costs of the Advisory Committee on Salmon and Steelhead Trout.

Comment. Section 11920 continues former Fish and Game Code Section 2762.5 without change.

§ 11925. Allocation from Cigarette and Tobacco Products Surtax Fund

11925. The department shall, after consultation with the Advisory Committee on Salmon and Steelhead Trout, allocate that amount of moneys appropriated to the department from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund that the department determines to be necessary to pay the costs for the advisory committee.

Comment. Section 11925 continues former Fish and Game Code Section 2762.6 without change.

§ 11930. Consultation with other agencies and committees in determining projects

11930. The director shall consult with the Resources Agency, the Department of Water Resources, the State Water Resources Control Board, the State Coastal

1 Conservancy, the San Francisco Bay Conservation and Development Commission,
2 and the California Coastal Commission in determining projects proposed for
3 funding pursuant to Section 11910.

4 **Comment.** Section 11930 continues former Fish and Game Code Section 2763 without
5 change.

6 **§ 11935. Consultation with other agencies and committees in developing projects**

7 11935. The director shall consult with other responsible state agencies and
8 appropriate fishery advisory committees, including, but not limited to, the
9 Advisory Committee on Salmon and Steelhead Trout and the Striped Bass Stamp
10 Advisory Committee, in developing projects to be funded pursuant to Section
11 11910.

12 **Comment.** Section 11935 continues former Fish and Game Code Section 2764 without
13 change.

14 **§ 11940. Recommendation of California Water Commission to Congress**

15 11940. The California Water Commission, in any recommendation it may make
16 to the Congress of the United States on funding for water projects, shall include
17 recommendations for studies, programs, and facilities necessary to correct fish and
18 wildlife problems caused, fully or partially, by federal water facilities and
19 operation, including, but not limited to, all of the following:

20 (a) The Red Bluff Dam.

21 (b) The Trinity and Lewiston Dams.

22 (c) The facilities necessary to protect wildlife areas in the Suisun Marsh and the
23 Sacramento-San Joaquin Delta from adverse water quality effects caused by the
24 federal Central Valley Project.

25 (d) The Kesterson Reservoir and the San Luis Drain.

26 **Comment.** Section 11940 continues former Fish and Game Code Section 2765 without
27 change.

28 CHAPTER 4. HATCHERY AND INLAND FISHERIES FUND

29 **§ 12000. Creation of fund**

30 12000. Notwithstanding Section 3600 and paragraph (1) of subdivision (a) of
31 Section 9105, commencing July 1, 2006, 33 1/3 percent of all sport fishing license
32 fees collected pursuant to 12850, 13100, 13105, 13150, or 13250 shall be
33 deposited into the Hatchery and Inland Fisheries Fund, which is hereby established
34 in the State Treasury.

35 **Comment.** Section 12000 continues the first sentence of former Fish and Game Code Section
36 13007(a) without substantive change.

37 **§ 12005. Authorized purposes**

38 12005. (a) Moneys in the Hatchery and Inland Fisheries Fund may be expended,
39 consistent with the Strategic Plan for Trout Management and Chapter 1

1 (commencing with Section 11700) and, upon appropriation by the Legislature, to
2 support programs of the department related to management, maintenance, and
3 capital improvement of California's fish hatcheries, the Heritage and Wild Trout
4 program, and enforcement activities related thereto, and to support other activities
5 eligible to be funded from revenue generated by sport fishing license fees.

6 (b) The department shall use sport fishing license fees collected and subject to
7 appropriation pursuant to subdivision (a) for the following purposes:

8 (1) For the department's attainment of a state hatchery production goal of 2.75
9 pounds of released trout per sport fishing license sold in the calendar year ending
10 two and one-half years earlier, based on the sales of the following types of sport
11 fishing licenses: resident; lifetime; nonresident year; nonresident, 10-day; 2-day;
12 1-day; and reduced fee. The predominant number of released fish shall be of
13 catchable size or larger. The department shall attain this goal in compliance with
14 Fish and Game Commission trout policies concerning catchable-sized trout
15 stocking, the Strategic Plan for Trout Management, and Chapter 1 (commencing
16 with Section 11700).

17 (2) To the Heritage and Wild Trout Program, at least two million dollars
18 (\$2,000,000), for the following purposes:

19 (A) At least seven new permanent positions for the Heritage and Wild Trout
20 Program.

21 (B) Permanent positions and seasonal aides in each region of the state as
22 necessary to contribute to the objectives of this section, the objectives of the
23 Strategic Plan for Trout Management pursuant to Section 11730, and other
24 activities necessary to the program.

25 (C) The development of trout management plans pursuant to Chapter 1
26 (commencing with Section 11700).

27 (D) The department may expend up to 25 percent of the funds made available to
28 the Heritage and Wild Trout Program for watershed restoration projects, resource
29 assessment, or scientific inquiry. The department may enter into contracts with
30 qualified entities including local governments, special districts, tribes, and
31 nonprofit organizations for the purposes of this subparagraph.

32 (3) For the development of the department's Strategic Plan for Trout
33 Management pursuant to Section 11730.

34 (4) The department shall ensure that the numbers of native California trout, as
35 defined in Section 555, produced are sufficient to equal or exceed 25 percent of
36 the numbers of trout produced by the state fish hatcheries to comply with
37 paragraph (1). The native trout produced in accordance with this paragraph shall
38 support department efforts to protect and restore cold water ecosystems, maintain
39 biological diversity, and provide diverse angling opportunities. Coastal rainbow
40 trout/steelhead produced for anadromous mitigation purposes shall be excluded
41 from contributing to the native trout production goals required by this paragraph.
42 Coastal rainbow trout/steelhead propagated for purposes other than anadromous
43 mitigation and released into their source watersheds may be counted toward the 25

1 percent native trout production goal. Native trout produced shall be naturally
2 indigenous stocks from their original source watersheds. The department may
3 release native trout produced into watersheds other than their original source
4 watershed only if the released trout will cause no harm to other native trout or
5 other biota in their original watersheds.

6 (5) The department may hire additional staff for state fish hatcheries, in order to
7 comply with this subdivision.

8 (c) The department may allocate any funds under this section, not necessary to
9 maintain the minimums specified in paragraphs (1) and (4) of subdivision (b), and
10 after the expenditure in paragraph (2) of subdivision (b), to the Fish and Game
11 Preservation Fund.

12 (d) The department may utilize federal funds to meet the funding formula
13 specified in subdivision (a) if those funds are otherwise legally available for this
14 purpose.

15 (e) A portion of the moneys subject to appropriation pursuant to subdivision (a)
16 may be used for the purpose of obtaining scientifically valid genetic
17 determinations of California native trout stocks, consistent with the department's
18 Strategic Plan for Trout Management.

19 (f) On an annual basis, the department shall invest in hatchery facility
20 improvements and rehabilitation to ensure progress towards achievement of the
21 hatchery fish production targets established pursuant to this section.

22 (g) Beginning January 1, 2015, the department may obtain hatchery-produced
23 fish from any California-based hatchery if all of the following criteria are satisfied:

24 (1) The goal specified in subdivision (b) is unmet.

25 (2) The department, following an inspection, determines that the California
26 hatchery is in compliance with operations, management, and monitoring standards
27 that are as stringent as those in effect at state hatcheries, in order to minimize the
28 risk of the spread of disease or invasive species into inland state waters and
29 fisheries.

30 (3) The cost per fish or per pound of fish provided by the California hatchery
31 shall not exceed the cost to the department of state hatchery fish calculated
32 equivalently and including transportation costs.

33 **Comment.** Section 12005 continues the second sentence of former Fish and Game Code
34 Section 13007(a), and subdivisions (b) through (g), without substantive change.

1 TITLE 3. CONSERVATION AND MANAGEMENT
2 OF MARINE LIVING RESOURCES

3 CHAPTER 1. GENERAL POLICIES

4 § 12100. Findings and declarations

5 12100. (a) The Legislature finds and declares that the Pacific Ocean and its rich
6 marine living resources are of great environmental, economic, aesthetic,
7 recreational, educational, scientific, nutritional, social, and historic importance to
8 the people of California.

9 (b) It is the policy of the state to ensure the conservation, sustainable use, and,
10 where feasible, restoration of California's marine living resources for the benefit
11 of all the citizens of the state. The objective of this policy shall be to accomplish
12 all of the following:

13 (1) Conserve the health and diversity of marine ecosystems and marine living
14 resources.

15 (2) Allow and encourage only those activities and uses of marine living
16 resources that are sustainable.

17 (3) Recognize the importance of the aesthetic, educational, scientific, and
18 recreational uses that do not involve the taking of California's marine living
19 resources.

20 (4) Recognize the importance to the economy and the culture of California of
21 sustainable sport and commercial fisheries and the development of commercial
22 aquaculture consistent with the marine living resource conservation policies of this
23 title.

24 (5) Support and promote scientific research on marine ecosystems and their
25 components to develop better information on which to base marine living resource
26 management decisions.

27 (6) Manage marine living resources on the basis of the best available scientific
28 information and other relevant information that the commission or department
29 possesses or receives.

30 (7) Involve all interested parties, including, but not limited to, individuals from
31 the sport and commercial fishing industries, aquaculture industries, coastal and
32 ocean tourism and recreation industries, marine conservation organizations, local
33 governments, marine scientists, and the public in marine living resource
34 management decisions.

35 (8) Promote the dissemination of accurate information concerning the condition
36 of, or management of, marine resources and fisheries by seeking out the best
37 available information and making it available to the public through the marine
38 resources management process.

39 (9) Coordinate and cooperate with adjacent states, as well as with Mexico and
40 Canada, and encourage regional approaches to management of activities and uses

1 that affect marine living resources. Particular attention shall be paid to coordinated
2 approaches to the management of shared fisheries.

3 **Comment.** Section 12100 continues former Fish and Game Code Section 7050 without
4 change.

5 **§ 12105. Scope of regulations**

6 12105. (a) A regulation adopted pursuant to this title shall apply only to ocean
7 waters and bays. Notwithstanding any other provision of this title, nothing
8 contained in this title grants the department or any other agency of the state any
9 regulatory authority not in existence on January 1, 1999, in any river upstream of
10 the mouth of such river, in the Sacramento-San Joaquin Delta or in any other
11 estuary.

12 (b) The policies in this title shall apply only to fishery management plans and
13 regulations adopted by the commission on or after January 1, 1999. No power is
14 delegated to the commission or the department by this title to regulate fisheries
15 other than the nearshore fishery, the white sea bass fishery, emerging fisheries,
16 and fisheries for which the commission or department had regulatory authority
17 prior to January 1, 1999.

18 **Comment.** Section 12105 continues former Fish and Game Code Section 7051 without
19 substantive change.

20 **CHAPTER 2. MARINE FISHERIES GENERALLY**

21 **§ 12150. Declaration of policy**

22 12150. The Legislature finds and declares that it is the policy of the state that:

23 (a) California's marine sport and commercial fisheries, and the resources upon
24 which they depend, are important to the people of the state and, to the extent
25 practicable, shall be managed in accordance with the policies and other
26 requirements of this title in order to assure the long-term economic, recreational,
27 ecological, cultural, and social benefits of those fisheries and the marine habitats
28 on which they depend.

29 (b) Programs for the conservation and management of the marine fishery
30 resources of California shall be established and administered to prevent
31 overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-
32 term protection and, where feasible, restoration of marine fishery habitats, and to
33 achieve the sustainable use of the state's fishery resources.

34 (c) Where a species is the object of sport fishing, a sufficient resource shall be
35 maintained to support a reasonable sport use, taking into consideration the
36 necessity of regulating individual sport fishery bag limits to the quantity that is
37 sufficient to provide a satisfying sport.

38 (d) The growth of commercial fisheries, including distant-water fisheries, shall
39 be encouraged.

1 **Comment.** Section 12150 continues former Fish and Game Code Section 7055 without
2 change.

3 **§ 12155. Management**

4 12155. In order to achieve the primary fishery management goal of
5 sustainability, every sport and commercial marine fishery under the jurisdiction of
6 the state shall be managed under a system whose objectives include all of the
7 following:

8 (a) The fishery is conducted sustainably so that long-term health of the resource
9 is not sacrificed in favor of short-term benefits. In the case of a fishery managed
10 on the basis of maximum sustainable yield, management shall have optimum yield
11 as its objective.

12 (b) The health of marine fishery habitat is maintained and, to the extent feasible,
13 habitat is restored, and where appropriate, habitat is enhanced.

14 (c) Depressed fisheries are rebuilt to the highest sustainable yields consistent
15 with environmental and habitat conditions.

16 (d) The fishery limits bycatch to acceptable types and amounts, as determined
17 for each fishery.

18 (e) The fishery management system allows fishery participants to propose
19 methods to prevent or reduce excess effort in marine fisheries.

20 (f) Management of a species that is the target of both sport and commercial
21 fisheries or of a fishery that employs different gears is closely coordinated.

22 (g) Fishery management decisions are adaptive and are based on the best
23 available scientific information and other relevant information that the
24 commission or department possesses or receives, and the commission and
25 department have available to them essential fishery information on which to base
26 their decisions.

27 (h) The management decisionmaking process is open and seeks the advice and
28 assistance of interested parties so as to consider relevant information, including
29 local knowledge.

30 (i) The fishery management system observes the long-term interests of people
31 dependent on fishing for food, livelihood, or recreation.

32 (j) The adverse impacts of fishery management on small-scale fisheries, coastal
33 communities, and local economies are minimized.

34 (k) Collaborative and cooperative approaches to management, involving fishery
35 participants, marine scientists, and other interested parties are strongly
36 encouraged, and appropriate mechanisms are in place to resolve disputes such as
37 access, allocation, and gear conflicts.

38 (l) The management system is proactive and responds quickly to changing
39 environmental conditions and market or other socioeconomic factors and to the
40 concerns of fishery participants.

(m) The management system is periodically reviewed for effectiveness in achieving sustainability goals and for fairness and reasonableness in its interaction with people affected by management.

Comment. Section 12155 continues former Fish and Game Code Section 7056 without change.

§ 12160. Commission regulation

12160. Any fishery management regulation adopted by the commission shall, to the extent practicable, conform to the policies of Sections 12150 and 12155.

Comment. Section 12160 continues former Fish and Game Code Section 7058 without substantive change.

§ 12165. Collaborative process

12165. (a) The Legislature finds and declares all of the following:

(1) Successful marine life and fishery management is a collaborative process that requires a high degree of ongoing communication and participation of all those involved in the management process, particularly the commission, the department, and those who represent the people and resources that will be most affected by fishery management decisions, especially fishery participants and other interested parties.

(2) In order to maximize the marine science expertise applied to the complex issues of marine life and fishery management, the commission and the department are encouraged to continue to, and to find creative new ways to, contract with or otherwise effectively involve Sea Grant staff, marine scientists, economists, collaborative factfinding process and dispute resolution specialists, and others with the necessary expertise at colleges, universities, private institutions, and other agencies.

(3) The benefits of the collaborative process required by this section apply to most marine life and fishery management activities including, but not limited to, the development and implementation of research plans, marine managed area plans, fishery management plans, and plan amendments, and the preparation of fishery status reports such as those required by Section 12250.

(4) Because California is a large state with a long coast, and because travel is time consuming and costly, the involvement of interested parties shall be facilitated, to the extent practicable, by conducting meetings and discussions in the areas of the coast and in ports where those most affected are concentrated.

(b) In order to fulfill the intent of subdivision (a), the commission and the department shall do all of the following:

(1) Periodically review marine life and fishery management operations with a view to improving communication, collaboration, and dispute resolution, seeking advice from interested parties as part of the review.

(2) Develop a process for the involvement of interested parties and for factfinding and dispute resolution processes appropriate to each element in the

1 marine life and fishery management process. Models to consider include, but are
2 not limited to, the take reduction teams authorized under the Marine Mammal
3 Protection Act (16 U.S.C. Sec. 1361 et seq.) and the processes that led to
4 improved management in the California herring, sea urchin, prawn, angel shark,
5 and white seabass fisheries.

6 (3) Consider the appropriateness of various forms of fisheries co-management,
7 which involves close cooperation between the department and fishery participants,
8 when developing and implementing fishery management plans.

9 (4) When involving fishery participants in the management process, give
10 particular consideration to the gear used, involvement of sport or commercial
11 sectors or both sectors, and the areas of the coast where the fishery is conducted in
12 order to ensure adequate involvement.

13 **Comment.** Section 12165 continues former Fish and Game Code Section 7059 without
14 substantive change.

15 CHAPTER 3. FISHERIES SCIENCE

16 § 12200. Legislative findings and declarations

17 12200. (a) The Legislature finds and declares that for the purposes of sustainable
18 fishery management and this title, essential fishery information is necessary for
19 federally and state-managed marine fisheries important to the people of this state
20 to provide sustainable economic and recreational benefits to the people of
21 California. The Legislature further finds and declares that acquiring essential
22 fishery information can best be accomplished through the ongoing cooperation and
23 collaboration of participants in fisheries.

24 (b) The department, to the extent feasible, shall conduct and support research to
25 obtain essential fishery information for all marine fisheries managed by the state.

26 (c) The department, to the maximum extent practicable and consistent with
27 Section 12165, shall encourage the participation of fishermen in fisheries research
28 within a framework that ensures the objective collection and analysis of data, the
29 collaboration of fishermen in research design, and the cooperation of fishermen in
30 carrying out research.

31 (d) The department may apply for grants to conduct research and may enter into
32 contracts or issue competitive grants to public or private research institutions to
33 conduct research.

34 **Comment.** Section 12200 continues former Fish and Game Code Section 7060 without
35 substantive change.

36 § 12205. External peer review program

37 12205. (a) The department shall establish a program for external peer review of
38 the scientific basis of marine living resources management documents. The
39 department, in its discretion and unless otherwise required by this title, may
40 submit to peer review, documents that include, but are not limited to, fishery

1 management plans and plan amendments, marine resource and fishery research
2 plans.

3 (b) The department may enter into an agreement with one or more outside
4 entities that are significantly involved with researching and understanding marine
5 fisheries and are not advocacy organizations. These entities may include, but not
6 be limited to, the Sea Grant program of any state, the University of California, the
7 California State University, the Pacific States Marine Fisheries Commission, or
8 any other entity approved by the commission to select and administer peer review
9 panels, as needed. The peer review panels shall be composed of individuals with
10 technical expertise specific to the document to be reviewed. The entity with which
11 the department enters into an agreement for a peer review shall be responsible for
12 the scientific integrity of the peer review process. Each peer reviewer may be
13 compensated as needed to ensure competent peer review. Peer reviewers shall not
14 be employees or officers of the department or the commission and shall not have
15 participated in the development of the document to be reviewed.

16 (c) The external peer review entity, within the timeframe and budget agreed
17 upon by the department and the external scientific peer review entity, shall provide
18 the department with the written report of the peer review panel that contains an
19 evaluation of the scientific basis of the document. If the report finds that the
20 department has failed to demonstrate that a scientific portion of the document is
21 based on sound scientific knowledge, methods, and practices, the report shall state
22 that finding, and the reasons for the finding. The department may accept the
23 finding, in whole or in part, and may revise the scientific portions of the document
24 accordingly. If the department disagrees with any aspect of the finding of the
25 external scientific peer review, it shall explain, and include as part of the record,
26 its basis for arriving at such a determination in the analysis prepared for the
27 adoption of the final document, including the reasons why it has determined that
28 the scientific portions of the document are based on sound scientific knowledge,
29 methods, or practice. The department shall submit the external scientific peer
30 review report to the commission with any peer reviewed document that is to be
31 adopted or approved by the commission.

32 (d) The requirements of this section do not apply to any emergency regulation
33 adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

34 (e) Nothing in this section shall be interpreted, in any way, to limit the authority
35 of the commission or department to adopt a plan or regulation.

36 **Comment.** Section 12205 continues former Fish and Game Code Section 7062 without
37 change.

38 CHAPTER 4. COMMISSION AND DEPARTMENT

39 § 12250. Report to Commission

40 12250. (a) The director shall report annually in writing to the commission on the
41 status of sport and commercial marine fisheries managed by the state. The date of

1 the report shall be chosen by the commission with the advice of the department.
2 Each annual report shall cover at least one-fourth of the marine fisheries managed
3 by the state so that every fishery will be reported on at least once every four years.
4 The department shall, consistent with Section 12165, involve expertise from
5 outside the department in compiling information for the report, which may
6 include, but need not be limited to, Sea Grant staff, other marine scientists, fishery
7 participants, and other interested parties.

8 (b) For each fishery reported on in an annual report, the report shall include
9 information on landings, fishing effort, areas where the fishery occurs, and other
10 factors affecting the fishery as determined by the department and the commission.
11 Each restricted access program shall be reviewed at least every five years for
12 consistency with the policies of the commission on restricted access fisheries.

13 (c) Notwithstanding subdivision (a), the first annual report shall be presented to
14 the commission on or before September 1, 2001, and shall cover all the marine
15 fisheries managed by the state. To the extent that the requirements of this section
16 and Section 12325 are duplicative, the first annual report may be combined with
17 the plan required pursuant to Section 12325.

18 **Comment.** Section 12250 continues former Fish and Game Code Section 7065 without
19 substantive change.

20 § 12255. Additional report content

21 12255. (a) The Legislature finds and declares that a number of human-caused
22 and natural factors can affect the health of marine fishery resources and result in
23 marine fisheries that do not meet the policies and other requirements of this title.

24 (b) To the extent feasible, the director's report to the commission pursuant to
25 Section 12250 shall identify any marine fishery that does not meet the
26 sustainability policies of this title. In the case of a fishery identified as being
27 depressed, the report shall indicate the causes of the depressed condition of the
28 fishery, describe steps being taken to rebuild the fishery, and, to the extent
29 practicable, recommend additional steps to rebuild the fishery.

30 (c) The director's report to the commission pursuant to Section 12250,
31 consistent with subdivision (m) of Section 12155, shall evaluate the management
32 system and may recommend modifications of that system to the commission.

33 **Comment.** Section 12255 continues former Fish and Game Code Section 7066 without
34 substantive change.

35 CHAPTER 5. FISHERY MANAGEMENT PLANS – GENERAL POLICIES

36 § 12300. Finding and declaration

37 12300. The Legislature finds and declares that the critical need to conserve,
38 utilize, and manage the state's marine fish resources and to meet the policies and
39 other requirements stated in this title require that the state's fisheries be managed
40 by means of fishery management plans.

1 **Comment.** Section 12300 continues former Fish and Game Code Section 7070 without
2 change.

3 **§ 12305. White seabass fishery management plans**

4 12305. (a) Any white seabass fishery management plan adopted by the
5 commission on or before January 1, 1999, shall remain in effect until amended
6 pursuant to this title.

7 (b) Notwithstanding paragraph (2) of subdivision (b) of Section 12325, any
8 white seabass fishery management plan adopted by the commission and in
9 existence on January 1, 1999, shall be amended to comply with this title on or
10 before January 1, 2002.

11 **Comment.** Section 12305 continues former Fish and Game Code Section 7071(a) without
12 substantive change.

13 **§ 12310. Effect of commission regulations**

14 12310. (a) In the case of any fishery for which the commission has management
15 authority, including white seabass, regulations that the commission adopts to
16 implement a fishery management plan or plan amendment for that fishery may
17 make inoperative, in regard to that fishery, any fishery management statute that
18 applies to that fishery, including, but not limited to, statutes that govern allowable
19 catch, restricted access programs, permit fees, and time, area, and methods of
20 taking.

21 (b) On and after January 1, 2000, the commission may adopt regulations as it
22 determines necessary, based on the advice and recommendations of the
23 department, and in a process consistent with Section 12165, to regulate all
24 emerging fisheries, consistent with Chapter 8 (commencing with Section 12600),
25 all fisheries for nearshore fish stocks, and all fisheries for white seabass.
26 Regulations adopted by the commission may include, but need not be limited to,
27 establishing time and area closures, requiring submittal of landing and permit
28 information, regulating fishing gear, permit fees, and establishing restricted access
29 fisheries.

30 **Comment.** Section 12310 continues former Fish and Game Code Section 7071(b) and (c)
31 without substantive change.

32 **§ 12315. Basis and use of plans**

33 12315. (a) Fishery management plans shall form the primary basis for managing
34 California's sport and commercial marine fisheries.

35 (b) Fishery management plans shall be based on the best scientific information
36 that is available, on other relevant information that the department possesses, or on
37 the scientific information or other relevant information that can be obtained
38 without substantially delaying the preparation of the plan.

39 (c) To the extent that conservation and management measures in a fishery
40 management plan either increase or restrict the overall harvest or catch in a

1 fishery, fishery management plans shall allocate those increases or restrictions
2 fairly among recreational and commercial sectors participating in the fishery.

3 **Comment.** Section 12310 continues former Fish and Game Code Section 7072(a)-(c) without
4 change.

5 **§ 12320. Nearshore fishery**

6 12320. Consistent with Chapter 3 (commencing with Section 22600) of Title 15
7 of Part 6, the commission shall adopt a fishery management plan for the nearshore
8 fishery on or before January 1, 2002, if funds are appropriated for that purpose in
9 the annual Budget Act or pursuant to any other law.

10 **Comment.** Section 12320 continues former Fish and Game Code Section 7072(d) without
11 substantive change.

12 **§ 12325. Submission, content, and consideration of master plan**

13 12325. (a) On or before September 1, 2001, the department shall submit to the
14 commission for its approval a master plan that specifies the process and the
15 resources needed to prepare, adopt, and implement fishery management plans for
16 sport and commercial marine fisheries managed by the state. Consistent with
17 Section 12165, the master plan shall be prepared with the advice, assistance, and
18 involvement of participants in the various fisheries and their representatives,
19 marine conservationists, marine scientists, and other interested persons.

20 (b) The master plan shall include all of the following:

21 (1) A list identifying the fisheries managed by the state, with individual fisheries
22 assigned to fishery management plans as determined by the department according
23 to conservation and management needs and consistent with subdivision (f) of
24 Section 12155.

25 (2) A priority list for preparation of fishery management plans. Highest priority
26 shall be given to fisheries that the department determines have the greatest need
27 for changes in conservation and management measures in order to comply with the
28 policies and requirements set forth in this title. Fisheries for which the department
29 determines that current management complies with the policies and requirements
30 of this title shall be given the lowest priority.

31 (3) A description of the research, monitoring, and data collection activities that
32 the department conducts for marine fisheries and of any additional activities that
33 might be needed for the department to acquire essential fishery information, with
34 emphasis on the higher priority fisheries identified pursuant to paragraph (2).

35 (4) A process consistent with Section 12165 that ensures the opportunity for
36 meaningful involvement in the development of fishery management plans and
37 research plans by fishery participants and their representatives, marine scientists,
38 and other interested parties.

39 (5) A process for periodic review and amendment of the master plan.

40 (c) The commission shall adopt or reject the master plan or master plan
41 amendment, in whole or in part, after a public hearing. If the commission rejects a

1 part of the master plan or master plan amendment, the commission shall return that
2 part to the department for revision and resubmission pursuant to the revision and
3 resubmission procedures for fishery management plans as described in subdivision
4 (a) of Section 12400.

5 **Comment.** Section 12325 continues former Fish and Game Code Section 7073 without
6 substantive change.

7 **§ 12330. Interim protocols**

8 12330. (a) The department shall prepare interim fishery research protocols for at
9 least the three highest priority fisheries identified pursuant to paragraph (2) of
10 subdivision (b) of Section 12325. An interim fishery protocol shall be used by the
11 department until a fishery management plan is implemented for that fishery.

12 (b) Consistent with Section 12165, each protocol shall be prepared with the
13 advice, assistance, and involvement of participants in the various fisheries and
14 their representatives, marine conservationists, marine scientists, and other
15 interested persons.

16 (c) Interim protocols shall be submitted to peer review as described in Section
17 12205 unless the department, pursuant to subdivision (d), determines that peer
18 review of the interim protocol is not justified. For the purpose of peer review,
19 interim protocols may be combined in the following circumstances:

20 (1) For related fisheries.

21 (2) For two or more interim protocols that the commission determines will
22 require the same peer review expertise.

23 (d) The commission, with the advice of the department, shall adopt criteria to be
24 applied in determining whether an interim protocol may be exempted from peer
25 review.

26 **Comment.** Section 12330 continues former Fish and Game Code Section 7074 without
27 substantive change.

28 CHAPTER 6. FISHERY MANAGEMENT PLAN PREPARATION,
29 APPROVAL, AND REGULATIONS

30 **§ 12400. Preparation of plans and amendments**

31 12400. (a) The department shall prepare fishery management plans and plan
32 amendments, including any proposed regulations necessary to implement plans or
33 plan amendments, to be submitted to the commission for adoption or rejection.
34 Prior to submitting a plan or plan amendment, including any proposed regulations
35 necessary for implementation, to the commission, the department shall submit the
36 plan to peer review pursuant to Section 12205, unless the department determines
37 that peer review of the plan or plan amendment may be exempted pursuant to
38 subdivision (c). If the department makes that determination, it shall submit its
39 reasons for that determination to the commission with the plan. If the commission
40 rejects a plan or plan amendment, including proposed regulations necessary for

1 implementation, the commission shall return the plan or plan amendment to the
2 department for revision and resubmission together with a written statement of
3 reasons for the rejection. The department shall revise and resubmit the plan or plan
4 amendment to the commission within 90 days of the rejection. The revised plan or
5 plan amendment shall be subject to the review and adoption requirements of this
6 chapter.

7 (b) The department may contract with qualified individuals or organizations to
8 assist in the preparation of fishery management plans or plan amendments.

9 (c) The commission, with the advice of the department and consistent with
10 Section 12165, shall adopt criteria to be applied in determining whether a plan or
11 plan amendment may be exempted from peer review.

12 (d) Fishery participants and their representatives, fishery scientists, or other
13 interested parties may propose plan provisions or plan amendments to the
14 department or commission. The commission shall review any proposal submitted
15 to the commission and may recommend to the department that the department
16 develop a fishery management plan or plan amendment to incorporate the
17 proposal.

18 **Comment.** Section 12400 continues former Fish and Game Code Section 7075 without
19 substantive change.

20 **§ 12405. Use of peer review panel**

21 12405. (a) To the extent practicable, and consistent with Section 12165, the
22 department shall seek advice and assistance in developing a fishery management
23 plan from participants in the affected fishery, marine scientists, and other
24 interested parties. The department shall also seek the advice and assistance of
25 other persons or entities that it deems appropriate, which may include, but is not
26 limited to, Sea Grant, the National Marine Fisheries Service, the Pacific States
27 Marine Fisheries Commission, the Pacific Fishery Management Council, and any
28 advisory committee of the department.

29 (b) In the case of a fishery management plan or a plan amendment that is
30 submitted to peer review, the department shall provide the peer review panel with
31 any written comments on the plan or plan amendment that the department has
32 received from fishery participants and other interested parties.

33 **Comment.** Section 12405 continues former Fish and Game Code Section 7076 without
34 substantive change.

35 **§ 12410. Availability for public review**

36 12410. A fishery management plan or plan amendment, or proposed regulations
37 necessary for implementation of a plan or plan amendment, developed by the
38 department shall be available to the public for review at least 30 days prior to a
39 hearing on the management plan or plan amendment by the commission. Persons
40 requesting to be notified of the availability of the plan shall be notified in
41 sufficient time to allow them to review and submit comments at or prior to a

1 hearing. Proposed plans and plan amendments and hearing schedules and agendas
2 shall be posted on the department's Internet website.

3 **Comment.** Section 12410 continues former Fish and Game Code Section 7077 without
4 change.

5 **§ 12415. Public hearings**

6 12415. (a) The commission shall hold at least two public hearings on a fishery
7 management plan or plan amendment prior to the commission's adoption or
8 rejection of the plan.

9 (b) The plan or plan amendment shall be heard not later than 60 days following
10 receipt of the plan or plan amendment by the commission. The commission may
11 adopt the plan or plan amendment at the second public hearing, at the
12 commission's meeting following the second public hearing, or at any duly noticed
13 subsequent meeting, subject to subdivision (c).

14 (c) When scheduling the location of a hearing or meeting relating to a fishery
15 management plan or plan amendment, the commission shall consider factors,
16 including, among other factors, the area of the state, if any, where participants in
17 the fishery are concentrated.

18 **Comment.** Section 12415 continues former Fish and Game Code Section 7078(a)-(c) without
19 change.

20 **§ 12420. Copy to Legislature**

21 12420. Notwithstanding Section 7550.5 of the Government Code, prior to the
22 adoption of a fishery management plan or plan amendment that would make
23 inoperative a statute, the commission shall provide a copy of the plan or plan
24 amendment to the Legislature for review by the Joint Committee on Fisheries and
25 Aquaculture or, if there is no such committee, to the appropriate policy committee
26 in each house of the Legislature.

27 **Comment.** Section 12420 continues former Fish and Game Code Section 7078(d) without
28 change.

29 **§ 12425. Adoption of implementing regulations**

30 12425. (a) The commission shall adopt any regulations necessary to implement
31 a fishery plan or plan amendment no more than 60 days following adoption of the
32 plan or plan amendment. All implementing regulations adopted under this
33 subdivision shall be adopted as a regulation pursuant to the rulemaking provisions
34 of the Administrative Procedure Act, Chapter 3.5 (commencing with Section
35 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The
36 commission's adoption of regulations to implement a fishery management plan or
37 plan amendment shall not trigger an additional review process under the California
38 Environmental Quality Act (Division 13 (commencing with Section 21000) of the
39 Public Resources Code).

(b) Regulations adopted by the commission to implement a plan or plan amendment shall specify any statute or regulation of the commission that is to become inoperative as to the particular fishery. The list shall designate each statute or regulation by individual section number, rather than by reference to articles or chapters.

Comment. Section 12425 continues former Fish and Game Code Section 7078(e) and (f) without change.

CHAPTER 7. CONTENTS OF FISHERY MANAGEMENT PLANS

§ 12500. Summary of plan

12500. Consistent with subdivision (b) of Section 12315, each fishery management plan prepared by the department shall summarize readily available information about the fishery including, but not limited to, all of the following:

(a) The species of fish and their location, number of vessels and participants involved, fishing effort, historical landings in the sport and commercial sectors, and a history of conservation and management measures affecting the fishery.

(b) The natural history and population dynamics of the target species and the effects of changing oceanic conditions on the target species.

(c) The habitat for the fishery and known threats to the habitat.

(d) The ecosystem role of the target species and the relationship of the fishery to the ecosystem role of the target species.

(e) Economic and social factors related to the fishery.

Comment. Section 12500 continues former Fish and Game Code Section 7080 without substantive change.

§ 12505. Procedure for review and amendment

12505. Each fishery management plan prepared by the department shall include a procedure for review and amendment of the plan, as necessary.

Comment. Section 12505 continues former Fish and Game Code Section 7087(a) without substantive change.

§ 12510. Fishery research protocol

12510. Consistent with subdivision (b) of Section 12315, each fishery management plan or plan amendment prepared by the department shall include a fishery research protocol that does all of the following:

(a) Describe past and ongoing monitoring of the fishery.

(b) Identify essential fishery information for the fishery, including, but not limited to, age and growth, minimum size at maturity, spawning season, age structure of the population, and, if essential fishery information is lacking, identify the additional information needed and the resources and time necessary to acquire the information.

(c) Indicate the steps the department shall take to monitor the fishery and to obtain essential fishery information, including the data collection and research methodologies, on an ongoing basis.

Comment. Section 12510 continues former Fish and Game Code Section 7081 without substantive change.

§ 12515. Conservation and management measures

12515. Each fishery management plan or plan amendment prepared by the department shall contain the measures necessary and appropriate for the conservation and management of the fishery according to the policies and other requirements in this title. The measures may include, but are not limited to, all of the following:

(a) Limitations on the fishery based on area, time, amount of catch, species, size, sex, type or amount of gear, or other factors.

(b) Creation or modification of a restricted access fishery that contributes to a more orderly and sustainable fishery.

(c) A procedure to establish and to periodically review and revise a catch quota in any fishery for which there is a catch quota.

(d) Requirement for a personal, gear, or vessel permit and reasonable fees.

Comment. Section 12515 continues former Fish and Game Code Section 7082 without change.

§ 12520. Incorporation of existing conservation and management measures

12520. (a) Each fishery management plan prepared by the department shall incorporate the existing conservation and management measures provided in this code that are determined by the department to result in a sustainable fishery.

(b) If additional conservation and management measures are included in the plan, the department shall, consistent with subdivision (b) of Section 12315, summarize anticipated effects of those measures on relevant fish populations and habitats, on fishery participants, and on coastal communities and businesses that rely on the fishery.

Comment. Section 12520 continues former Fish and Game Code Section 7083 without substantive change.

§ 12525. Minimizing of adverse effects on habitat

12525. (a) Consistent with subdivision (b) of Section 12315, each fishery management plan or plan amendment prepared by the department for a fishery that the department has determined has adverse effects on marine fishery habitat shall include measures that, to the extent practicable, minimize adverse effects on habitat caused by fishing.

(b) Subdivision (a) does not apply to activities regulated by **Chapter 6 (commencing with Section 6650) of Part 1.**

Comment. Section 12525 continues former Fish and Game Code Section 7084 without substantive change.

1 **§ 12530. Bycatch information**

2 12530. Consistent with subdivision (b) of Section 12315, each fishery
3 management plan or plan amendment prepared by the department, in fisheries in
4 which bycatch occurs, shall include all of the following:

5 (a) Information on the amount and type of bycatch.

6 (b) Analysis of the amount and type of bycatch based on the following criteria:

7 (1) Legality of the bycatch under any relevant law.

8 (2) Degree of threat to the sustainability of the bycatch species.

9 (3) Impacts on fisheries that target the bycatch species.

10 (4) Ecosystem impacts.

11 (c) In the case of unacceptable amounts or types of bycatch, conservation and
12 management measures that, in the following priority, do the following:

13 (1) Minimize bycatch.

14 (2) Minimize mortality of discards that cannot be avoided.

15 **Comment.** Section 12530 continues former Fish and Game Code Section 7085 without
16 substantive change.

17 **§ 12535. Overfishing information**

18 12535. (a) Consistent with subdivision (b) of Section 12315, each fishery
19 management plan or plan amendment prepared by the department shall specify
20 criteria for identifying when the fishery is overfished.

21 (b) In the case of a fishery management plan for a fishery that has been
22 determined to be overfished or in which overfishing is occurring, the fishery
23 management plan shall contain measures to prevent, end, or otherwise
24 appropriately address overfishing and to rebuild the fishery.

25 (c) Any fishery management plan, plan amendment, or regulation prepared
26 pursuant to subdivision (b), shall do both of the following:

27 (1) Specify a time period for preventing or ending or otherwise appropriately
28 addressing overfishing and rebuilding the fishery that shall be as short as possible,
29 and shall not exceed 10 years except in cases where the biology of the population
30 of fish or other environmental conditions dictate otherwise.

31 (2) Allocate both overfishing restrictions and recovery benefits fairly and
32 equitably among sectors of the fishery.

33 **Comment.** Section 12535 continues former Fish and Game Code Section 7086 without
34 substantive change.

35 **§ 12540. Other required information**

36 12540. Each fishery management plan or plan amendment prepared by the
37 department shall include the following:

38 (a) A specification of the types of regulations that the department may adopt
39 without a plan amendment.

40 (b) A list of any statutes and regulations that shall become inoperative, as to the
41 particular fishery covered by the fishery management plan or plan amendment,

upon the commission's adoption of implementing regulations for that fishery management plan or plan amendment.

Comment. Subdivision (a) of Section 12540 continues former Fish and Game Code Section 7087(b) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 7088 without substantive change.

CHAPTER 8. EMERGING FISHERIES

§ 12600. Legislative declaration and duty of commission

12600. The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. Therefore, the commission, based upon the advice and recommendations of the department, shall encourage, manage, and regulate emerging fisheries consistent with the policies of this title.

Comment. Section 12600 continues former Fish and Game Code Section 7090(a) without change.

§ 12605. "Emerging fishery"

12605. "Emerging fishery," in regard to a marine fishery, means a fishery that meets both of the following requirements:

(a) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(b) A fishery that is not an established fishery.

Comment. Section 12605 continues former Fish and Game Code Section 7090(b)(1), and the first sentence of former Fish and Game Code Section 7090(b)(2), without change.

§ 12610. "Established fishery"

12610. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(a) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(b) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(c) A fishery for which a population estimate and catch quota is established annually.

(d) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(e) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size

limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

Comment. Section 12610 continues the second sentence of former Fish and Game Code Section 7090(b)(2), and former Fish and Game Code Section 7090(b)(2)(A)-(E) without change.

Note. Existing Fish and Game Code Section 7090(b)(2) (which would be continued by proposed Section 12610), provides that an “established fishery” means, “prior to January 1, 1999,” any of a list of described fisheries.

The Commission invites comment on whether this definition is now obsolete and should be discontinued, or alternatively continued without the date limitation.

§ 12615. Department monitoring requirement

12615. The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

Comment. Section 12615 continues former Fish and Game Code Section 7090(c) without change.

§ 12620. Commission authority

12620. The commission, upon the recommendation of the department, may do either, or both, of the following:

(a) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted.

(b) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

Comment. Section 12620 continues former Fish and Game Code Section 7090(d) without change.

§ 12625. Compliance with requirements for fishery management plan generally

12625. (a) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this title.

(b) In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years unless extended by the commission.

(c) During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but need not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

1 **Comment.** Section 12625 continues former Fish and Game Code Section 7090(e) without
2 substantive change.

3 **§ 12630. Fee**

4 12630. (a) The commission is authorized to impose a fee on an emerging
5 fishery in order to pay the costs of implementing this chapter.

6 (b) The fees may include, but need not be limited to, ocean fishing stamps and
7 permit fees.

8 (c) The fees may not be levied in excess of the necessary costs to implement and
9 administer this chapter.

10 (d) The commission may reduce fees annually if it determines that sufficient
11 revenues exist to cover costs incurred by the department in administering this
12 chapter.

13 (e) The commission and the department, with the advice of fishery participants
14 and other interested parties, shall consider alternative ways to fund the evaluation
15 of emerging fisheries.

16 **Comment.** Section 12630 continues former Fish and Game Code Section 7090(f) without
17 substantive change.

18 **§ 12635. Incorporation into fishery management plan**

19 12635. An emerging fishery is subject to this chapter unless the department
20 incorporates the fishery into a fishery management plan developed under Sections
21 12300 to 12540, inclusive.

22 **Comment.** Section 12635 continues former Fish and Game Code Section 7090(g) without
23 substantive change.

24 **§ 12640. Conflict of chapter with other sections**

25 12640. In the event that this chapter is found to conflict with Section 19900,
26 19905, or 19910, this section shall prevail.

27 **Comment.** Section 12640 continues former Fish and Game Code Section 7090(h) without
28 substantive change.

29 **PART 5. SPORT FISHING**

30 **TITLE 1. GENERAL PROVISIONS**

31 **§ 12800. Application of other provisions**

32 12800. Sport fishing is also governed by Part 4 (commencing with Section
33 11500).

34 **Comment.** Section 12800 is new. It is added for drafting convenience.

1 **§ 12805. Scope of part**

2 12805. The provisions of this part apply to the taking and possession of fish for
3 any purpose other than commercial.

4 **Comment.** Section 12805 continues former Fish and Game Code Section 7100 without
5 change.

6 **TITLE 2. LICENSING**

7 **CHAPTER 1. GENERAL PROVISIONS**

8 **§ 12850. Authority to take**

9 12850. Except as otherwise provided by law, a valid sport fishing license
10 authorizes sport fishing anywhere in this state.

11 **Comment.** Section 12850 continues part of former Fish and Game Code Section 7149.05(a)
12 without substantive change.

13 **CHAPTER 2. REQUIREMENTS**

14 **Article 1. General Provisions**

15 **§ 12900. Valid license in possession**

16 12900. (a) Except as otherwise provided by law, all persons shall obtain a valid
17 sport fishing license before sport fishing.

18 (b) A person required to obtain a valid sport fishing license shall have that
19 license on his or her person or in his or her immediate possession, or where
20 otherwise specifically required by law or regulation to be kept, when sport fishing.
21 In the case of a person diving from a boat, the license may be kept in the boat, or
22 in the case of a person diving from the shore, the license may be kept within 500
23 yards of the shore.

24 **Comment.** Section 12900 continues former Fish and Game Code Section 7145(a) without
25 substantive change. The referenced exception for persons under the age of 16 years is continued
26 by Section 13000.

27 **§ 12905. Fishing with two rods**

28 12905. (a) A person sport fishing in inland water with two rods must first obtain
29 a second-rod sport fishing validation, in addition to a valid California sport fishing
30 license and any other required stamp or validation, and have that second-rod
31 validation affixed to his or her valid sport fishing license.

32 (b) A person who has a valid second-rod sport fishing validation affixed to his or
33 her valid sport fishing license may sport fish with two rods in inland waters in any
34 sport fishery in which the regulations of the commission provide for the taking of
35 fish by angling, except in the following circumstances:

36 (1) In waters in which only artificial lures or barbless hooks may be used.

(2) When sport fishing with a second-rod sport fishing validation, in the Smith River in Del Norte County.

(c) A person may sport fish in ocean waters with two or more rods, without a second-rod sport fishing validation, as allowed by regulations of the commission.

Comment. Subdivisions (a) and (b) of Section 12905 continue former Fish and Game Code Section 7149.45(a) without substantive change.

Subdivision (c) is new. It is added to clarify what is implied from the entirety of former Fish and Game Code Section 7149.45(a), but not expressly stated.

Note. The Fish and Game Code does not appear to expressly address whether a second-rod enhancement is required to fish in ocean waters with multiple rods. However, based on educational material published by the Department of Fish and Wildlife, and inferences drawn from Fish and Game Commission regulations, it is the Commission's understanding that fishing in the ocean with multiple rods is generally permitted without any second-rod validation, limited only by Fish and Game Commission regulations relating to specified locations, or specified types of fish. See, e.g., 14 CCR § 28.65.

The Commission invites comment on whether proposed Section 12905(c), which would codify this understanding, is an accurate statement of existing law, and if so, whether it should be added to the proposed law.

§ 12910. Ocean sport fishing in specified waters

12910. (a) In addition to a valid California sport fishing license and any other applicable license stamp or validation issued pursuant to this code, a person sport fishing in ocean waters south of a line extending due west from Point Arguello shall have a valid sport fishing ocean enhancement validation permanently affixed to his or her fishing license.

(b) A person fishing pursuant to a sport fishing license issued pursuant to paragraph (4) or (5) of subdivision (a) of Section 13100 is exempt from the requirement in subdivision (a).

(c) The provisions of this section do not apply to activities governed by Part 1 (commencing with Section 23300) of Division 7.

Comment. Subdivisions (a) and (b) of Section 12910 continue the first and third sentences of former Fish and Game Code Section 6596.1(a) without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 6403 applicable to the provisions of this section.

Note. The Fish and Game Code does not appear to expressly address whether a second-rod enhancement is required to fish in ocean waters with multiple rods. However, based on educational material published by the Department of Fish and Wildlife, and inferences drawn from Fish and Game Commission regulations, it is the Commission's understanding that fishing in the ocean with multiple rods is generally permitted without any second-rod validation, limited only by Fish and Game Commission regulations relating to specified locations, or specified types of fish. See, e.g., 14 CCR § 28.65.

The Commission invites comment on whether proposed Section 12905(c), which would codify this understanding, is an accurate statement of existing law, and if so, whether it should be added to the proposed law.

Article 2. Colorado River

§ 12950. “Colorado River”

12950. As used in this article, “Colorado River” refers to the waters of the Colorado River, and adjacent waters other than canals, drains, or ditches used to transport water used for irrigation or domestic purposes.

Comment. Section 12950 is drawn from former Fish and Game Code Section 7180.1(a).

§ 12955. Fishing on Colorado River

12955. (a) A person sport fishing from or on a boat or other floating device on the Colorado River shall have in his or her possession, in addition to a valid sport fishing license issued by either the state of Arizona or the state of California, one of the following validations:

(1) If the person is in possession of a California sport fishing license, a valid Colorado River special use validation issued by the state of Arizona.

(2) If the person is in possession of a Arizona sport fishing license, a valid Colorado River special use validation issued by the state of California.

(b) A Colorado River special use validation, when accompanied by the proper license, permits sport fishing in any part of the Colorado River, and permits a person sport fishing to enter the Colorado River from any point.

Comment. Subdivisions (a) and (b) of Section 12955 restate former Fish and Game Code Section 7180.1(a), (b), and the first sentence of subdivision (c), without substantive change.

Note. Proposed Section 12955 is intended to restate existing Fish and Game Code Section 7180.1(a), (b), and the first sentence of subdivision (c), to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“7180.1. (a) Any person taking fish or amphibia for purposes other than profit from or on a boat or other floating device on the waters of the Colorado River and on adjacent waters, except canals, drains, or ditches used to transport water used for irrigation or domestic purposes, shall have in his or her possession a valid sportfishing license issued by either the State of Arizona or State of California.

(b) In addition to either of the licenses, a person taking fish or amphibia as indicated shall have in his or her possession a Colorado River special use validation. If he or she is a person having in his or her possession a valid California sportfishing license, he or she shall have an Arizona special use validation to fish legally the waters described above. If he or she is a person having in his or her possession a valid Arizona sportfishing license, he or she shall have a California special use validation to fish legally the waters described above.

(c) A special use validation, when accompanied by the proper license, permits fishing in any portion of those waters, and permit fishermen to enter the waters from any point.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of these provisions.

§ 12960. Colorado River shoreline fishing

12960. (a) A person sport fishing from the Arizona shore of the Colorado River shall have in his or her possession a valid sport fishing license issued by the state of Arizona. A Colorado River special use validation is not required under this

subdivision, as long as the person sport fishing remains on the shore and does not embark on the water.

(b) A person sport fishing from the California shore of the Colorado River shall have in his or her possession either of the following license entitlements:

(1) A valid sport fishing license issued by the state of California.

(2) A valid sport fishing license issued by the state of Arizona, and a Colorado River special use validation issued by the state of California.

Comment. Section 12960 restates subdivision (a) of former Fish and Game Code Section 7181.1 without substantive change.

Note. Proposed Section 12960 is intended to restate existing Fish and Game Code Section 7181.1 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“7181.1. (a) A person fishing from the shore in the waters of the Colorado River located in Arizona or California shall have in his or her possession a valid sportfishing license issued by the state that has jurisdiction over that shore. That shoreline fishing does not require a Colorado River special use validation as long as the fisherman remains on the shore and does not embark on the water. Any person, however, having in his or her possession a valid Arizona sportfishing license and a California special use validation may fish from the shore in the waters of the Colorado River, or adjacent waters, except canals, drains, and ditches used to transport water used for irrigation or domestic purposes, located in California without a sport fishing license issued by the State of California.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 12965. Effectiveness of article

12965. This article shall become ineffective if Chapter 6 (commencing with Section 13350) becomes ineffective pursuant to subdivision (a) of Section 13350.

Comment. Section 12965 continues the effect of former Fish and Game Code Section 7185 as that provision applied to former Fish and Game Code Sections 7180.1 and 7181.1. See Section 13350(a).

CHAPTER 3. EXCEPTIONS

§ 13000. Persons under the age of 16 years

13000. Section 12900 and subdivision (a) of Section 12905 do not apply to persons under the age of 16 years.

Comment. Section 13000 continues a part of former Fish and Game Code Section 7145(a) without substantive change.

Notes. (1) It is the Commission’s understanding from a review of published Department of Fish and Wildlife material that a person under the age of 16 years is exempted from both the general sport fishing license requirement in existing Section 7145, and the second-rod sport fishing validation requirement in existing Section 7149.45.

The Commission invites comment on whether proposed Section 13000, exempting persons under 16 years of age from both the sport fishing licensing requirement in proposed Section 12900 and the second-rod sport fishing validation requirement in proposed Section 12905(a), accurately states existing law.

(2) The Commission has located no information indicating whether persons under 16 years of age are exempted from the ocean enhancement validation requirement in existing Section 6596.1 (which would be continued by proposed Section 12910).

The Commission invites comment on whether an exemption from proposed Section 12910 should be added to proposed Section 13000.

(3) The Commission has located no information indicating whether persons under 16 years of age are exempted from the special requirements for fishing in or on the shore of the Colorado River, as provided by existing Sections 7180.1 and 7181.1 (sections that would be continued by proposed Sections 12955 and 12960).

The Commission invites comment on whether an exemption from proposed Sections 12955 and 12960 should be added to proposed Section 13000.

§ 13005. Fishing from public pier

13005. (a) Section 12900 and subdivision (a) of Section 12905 do not apply to sport fishing by any legal means from a public pier, as defined by commission regulation, in the ocean waters of the state.

(b) For purposes of this section, “ocean waters of the state” include, but are not limited to, any of the following:


(1) Open waters adjacent to the ocean and any island.

(2) Waters of any open or enclosed bay contiguous to the ocean.

(3) The San Francisco and San Pablo Bays, including any tidal bay belonging to either of those bays.

(4) Any slough or estuary between the Golden Gate Bridge and the Benicia-Martinez Bridge.

Comment. Section 13005 continues the part of former Fish and Game Code Section 7153(a) applicable to fishing from a public pier, and Section 7153(b), without substantive change.

 **Note.** It is the Commission’s understanding from a review of published Department of Fish and Wildlife material that persons sport fishing from public piers who are exempted from the general sport fishing license requirement by existing Section 7153 are also exempted from the second-rod sport fishing validation requirement in existing Section 7149.45.

The Commission invites comment on whether proposed Section 13005, exempting specified persons fishing from specified public piers from both the sport fishing licensing requirement in proposed Section 12900 and the second-rod sport fishing validation requirement in proposed Section 12905(a), accurately states existing law.

§ 13010. Fishing on private property

13010. (a) Section 12900 and subdivision (a) of Section 12905 do not apply to sport fishing by an owner of privately owned real property, or an invitee of an owner who does not provide the owner compensation, from a lake or pond that is wholly enclosed by that owner’s real property, that is located offstream, and that does not at any time derive water from, or supply water to, any permanent or intermittent artificial or natural lake, pond, stream, wash, canal, river, creek, waterway, aqueduct, or similar water conveyance system of the state. Access and control of the real property shall be under the direct authority of the owner, and not of another person or entity.

(b) This section does not, and shall not be construed to, authorize the introduction, migration, stocking, or transfer of aquatic species, prohibited species, or any other nonnative or exotic species, into waters of the state or waterways.

(c) This section does not supersede or otherwise affect any provision of law that governs aquaculture, including, but not limited to, the operation of a trout farm, or any activity that is an adjunct to or a feature of, or that is operated in conjunction with, any other enterprise operated for a fee, including, but not limited to, a private park or private recreation area.

Comment. Section 13010 continues former Fish and Game Code Section 7145(b) without substantive change.

Note. It is the Commission's sense, based on the apparent interplay between the second-rod sport fishing validation requirement and other exemptions from sport fishing license requirements, that persons exempted from the general sport fishing license requirement by existing Section 7145(b) are also exempted from the second-rod sport fishing validation requirement in existing Section 7149.45.

The Commission invites comment on whether proposed Section 13010, exempting specified persons who take fish on specified private property from both the sport fishing licensing requirement in proposed Section 12900 and the second-rod sport fishing validation requirement in proposed Section 12905(a), accurately states existing law.

§ 13015. Angling at aquaculture facility

13015. Section 12900 and subdivision (a) of Section 12905 do not apply to sport fishing by angling at an aquaculture facility site that is registered pursuant to Section 235 of Title 14 of the California Code of Regulations.

Comment. Section 13015 continues the part of former Fish and Game Code Section 7153(a) applicable to angling from an aquaculture facility site without substantive change.

Note. It is the Commission's sense, based on the apparent interplay between the second-rod sport fishing validation requirement and other exemptions from sport fishing license requirements, that persons angling at specified aquaculture facilities who are exempted from the general sport fishing license requirement by existing Section 7153 are also exempted from the second-rod sport fishing validation requirement in existing Section 7149.45.

The Commission invites comment on whether proposed Section 13015, exempting specified persons angling at specified aquaculture facilities from both the sport fishing licensing requirement in proposed Section 12900 and the second-rod sport fishing validation requirement in proposed Section 12905(a), accurately states existing law.

§ 13020. Free sport fishing days

13020. Notwithstanding Section 12900, the director may designate not more than two days, which may or may not be consecutive, in each year, as free sport fishing days, during which residents and nonresidents may, without a sport fishing license and without the payment of any fee, exercise the privileges of a holder of a sport fishing license, subject to all limitations, restrictions, conditions, laws, rules, and regulations applicable to the holder of a sport fishing license, including but not limited to the provisions of Sections 12905, 12910, 12955, and 12960.

Comment. Section 13020 continues former Fish and Game Code Section 7149.7 without substantive change.

Note. It is the Commission’s understanding from a review of educational Department of Fish and Wildlife material that persons sport fishing on free sport fishing days are *not* exempted from the sport fishing ocean enhancement validation requirement in existing Section 6596.1, the second-rod sport fishing validation requirement in existing Section 7149.45, or the special requirements for fishing in or on the shore of the Colorado River, as provided by existing Sections 7180.1 and 7181.1. To provide clarity on this issue, proposed Section 13020 expressly states the continued applicability of those requirements.

However, it remains unclear how a person sport fishing without a sport fishing license on a free sport fishing day would be able to comply with any of these validation requirements, given that the enhancements are required to be permanently affixed to a sport fishing license. See, e.g., existing Sections 6596.1(a), 7149.45(a), and 7180.1(b). It may be that “free fishing day” privileges do not include permission to engage in certain types of sport fishing (i.e., with two rods in inland waters, or in specified parts of the ocean or on the Colorado River), that require special enhancements.

The Commission invites comment on whether the Commission’s understanding of the application of existing Section 7149.7 is correct, and if so, how that interpretation is intended to be reconciled with the requirement that the identified enhancements be permanently affixed to a sport fishing license.

CHAPTER 4. FEES

Article 1. Sport Fishing License

§ 13100. Sport fishing license

13100. (a) The fee for a sport fishing license is as follows:

(1) For a resident, for a calendar year, or, if issued after the beginning of that year, for the remainder of that year, a base fee of thirty-one dollars and twenty-five cents (\$31.25).

(2) For a nonresident, for a calendar year, or, if issued after the beginning of that year, for the remainder of that year, a base fee of eighty-four dollars (\$84).

(3) For a nonresident, for 10 consecutive days beginning on the date specified on the license, the fee set forth in paragraph (1).

(4) For a resident or nonresident, for two consecutive designated calendar days, one-half of the fee set forth in paragraph (1). Notwithstanding Section 2930, more than one two-day license issued for different two-day periods may be issued to or possessed by a person at one time.

(5) For a resident or nonresident, for one designated day, a base fee of ten dollars (\$10).

(b) The base fees specified in this section are applicable commencing January 1, 2004, and shall be adjusted annually thereafter pursuant to Section 3755.

(c) The commission shall adjust the amount of the fees specified in subdivision (b), as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to those licenses.

Comment. Subdivision (a) of Section 13100 continues former Fish and Game Code Section 7149.05(a) without substantive change.

1 Subdivision (b) continues former Fish and Game Code Section 7149.05(d) without substantive
2 change.

3 Subdivision (c) continues former Fish and Game Code Section 7149.05(e) without substantive
4 change.

5 **Note.** Existing Section 7149.05(a)(4) cross-refers to existing Section 1053 of the existing
6 code, a section that was repealed by 2015 Cal. Stat. ch. 683. Section 1053 generally prohibited
7 obtaining more than one paper license – a form of license that is now obsolete – of the same class,
8 for the same license year, except under specified conditions. As a substantially similar prohibition
9 applicable to electronic licenses appears in existing Section 1053.1, proposed Section 13100(a)(4)
10 would cross-refer to the section of the proposed law that continues existing Section 1053.1.

11 **The Commission seeks comment on whether that revision is appropriate.**

12 **§ 13105. Lifetime sport fishing license**

13 13105. (a) In addition to Sections 9100 and 12850, the department shall issue a
14 lifetime sport fishing license pursuant to this section.

15 (b) A lifetime sport fishing license authorizes sport fishing anywhere in this state
16 in accordance with the law for the life of the person to whom issued, unless
17 revoked for a violation of this code or regulations adopted pursuant to this code. A
18 lifetime sport fishing license is not transferable.

19 (c) A lifetime sport fishing license does not include any special tags, stamps, or
20 fees, and may be issued only to a resident.

21 (d) The fee for a lifetime sport fishing license is as follows:

22 (1) For a person 62 years of age or over, a base fee of three hundred sixty-five
23 dollars (\$365).

24 (2) For a person 40 years of age or over and less than 62 years of age, a base fee
25 of five hundred forty dollars (\$540).

26 (3) For a person 10 years of age or over and less than 40 years of age, a base fee
27 of six hundred dollars (\$600).

28 (4) For a person less than 10 years of age, a base fee of three hundred sixty-five
29 dollars (\$365).

30 (e) Upon payment of a base fee of two hundred forty-five dollars (\$245), a
31 person holding a lifetime sport fishing license or a lifetime sport fishing and
32 hunting license shall be entitled annually to the privileges afforded to a person
33 holding a second-rod validation issued pursuant to Section 12905, a sport fishing
34 ocean enhancement validation issued pursuant to Section 12910, one steelhead
35 trout report restoration card issued pursuant to Section 44000, and one salmon
36 punchcard issued pursuant to regulations adopted by the commission. Lifetime
37 privileges issued pursuant to this subdivision are not transferable.

38 (f) The base fees specified in this section are applicable commencing January 1,
39 2004, and shall be adjusted annually thereafter pursuant to Section 3755.

40 (g) Nothing in this section requires a person less than 16 years of age to obtain a
41 license to engage in sport fishing.

(h) Nothing in this section exempts a license applicant from meeting other qualifications or requirements otherwise established by law for the privilege of sport fishing.

Comment. Section 13105 continues former Fish and Game Code Section 7149.2 without substantive change. References in subdivision (e) of former Fish and Game Code Section 7149.2 to a second-rod “stamp” and a sport fishing ocean enhancement “stamp” are discontinued as obsolete. See 2015 Cal. Stat. ch. 683, §§ 19, 23 (repeal of former Fish and Game Code sections providing for issuance of such stamps).

§ 13110. Job Corps enrollee

13110. For the purpose of obtaining a sport fishing license, enrollees in the Job Corps, created by the Economic Opportunity Act of 1964 (Public Law 88-452), shall be deemed to be residents of California.

Comment. Section 13110 continues former Fish and Game Code Section 7149.5 without change.

Article 2. Reduced Fee Licenses

§ 13150. Reduced fee license

13150. (a) Upon application to the department’s headquarters office in Sacramento, the following persons shall be issued a reduced fee sport fishing license:

(1) A disabled veteran having a 50 percent or greater service-connected disability, upon presentation of proof of an honorable discharge from military service and proof of the disability. Proof of the disability shall be by certification from the United States Veterans Administration or by presentation of a license issued pursuant to this paragraph in the preceding license year.

(2) A member of the military who is a “recovering service member” pursuant to Section 1602(7) of the federal National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181). Proof of eligibility for a reduced fee sport fishing license pursuant to this paragraph shall be by submission of a letter, online or in hardcopy, to the department from that person’s commanding officer or from a military medical doctor, stating that the person is a recovering service member.

(3) A resident over 65 years of age whose total monthly income from all sources, including any old age assistance payments, does not exceed the amount in effect on September 1 of each year contained in subdivision (c) of Section 12200 of the Welfare and Institutions Code, for single persons, or subdivision (d) of Section 12200 of the Welfare and Institutions Code combined income for married persons, as adjusted pursuant to that section. The amount in effect on September 1 of each year shall be the amount used to determine eligibility for a reduced fee license during the following calendar year. Proof of eligibility for a reduced fee sport fishing license pursuant to this paragraph shall be by a letter or other document, as specified by the department, from a public agency.

1 (b) A person who has been convicted of any violation of this code is ineligible
2 for a license pursuant to this section.

3 (c) A person applying for a reduced fee sport fishing license shall submit
4 adequate documentation for the department to determine whether the applicant is
5 eligible for a reduced fee sport fishing license. The department shall not issue a
6 reduced fee sport fishing license to any person unless the department is satisfied
7 that the applicant has provided adequate documentation of eligibility for that
8 license.

9 (d) The fee for a license issued pursuant to this section shall be a base fee of
10 four dollars (\$4) applicable commencing January 1, 1996, and annually adjusted
11 thereafter pursuant to Section 3755.

12 (e) A license issued pursuant to this section is valid for a calendar year, or if
13 issued after the beginning of that year, for the remainder of that year.

14 **Comment.** Section 13150 continues former Fish and Game Code Section 7150 without
15 substantive change.

16 Article 3. Free Licenses

17 § 13200. Free license for individuals

18 13200. (a) Upon application to the department, the following persons shall be
19 issued a sport fishing license, free of any charge or fee:

20 (1) A blind person, upon presentation of proof of blindness. For purposes of this
21 paragraph, “blind person” means a person who in each eye has central visual
22 acuity of 20/200 or less with the aid of the best possible correcting lens, or central
23 visual acuity better than 20/200 if the widest diameter of the remaining visual field
24 is no greater than 20 degrees. Proof of blindness shall be by certification from a
25 qualified licensed optometrist or ophthalmologist, or by presentation of a license
26 issued pursuant to this paragraph in a previous license year.

27 (2) A person with a developmental disability, upon presentation of certification
28 of that disability from a qualified licensed physician, or from the director of a state
29 regional center for the developmentally disabled.

30 (3) A resident who is permanently unable to move from place to place without
31 the aid of a wheelchair, walker, forearm crutches, or a comparable mobility-related
32 device. Proof of the disability shall be by certification from a licensed physician or
33 surgeon, or by presentation of a license issued pursuant to this paragraph in a
34 license year after 1996.

35 (4) A resident Native American who, in the discretion of the department, is
36 financially unable to pay the fee required for the license.

37 (b) A person who has been convicted of any violation of this code is ineligible
38 for a license pursuant to this section.

39 (c) Sport fishing licenses issued pursuant to paragraphs (1), (2), and (3) of
40 subdivision (a) are valid for five calendar years, or if issued after the beginning of
41 the first year, for the remainder of the five calendar years.

(d) Sport fishing licenses issued pursuant to paragraph (4) of subdivision (a) are valid for a calendar year or, if issued after the beginning of that year, for the remainder of that year.

Comment. Section 13200 continues former Fish and Game Code Section 7151(a)-(c) without substantive change.

§ 13205. Free group sport fishing license for persons with disabilities

13205. (a) Upon application to the department, the department may issue a group sport fishing license, free of any charge or fee, to a group of persons with mental or physical disabilities who are under the care of any of the following entities:

(1) A certified federal, state, county, city, or private licensed care center that is a community care facility as defined in subdivision (a) of Section 1502 of the Health and Safety Code.

(2) An organization exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code.

(3) A school or school district.

(b) The organization listed in subdivision (a) shall provide evidence that it is a legitimate private licensed care center, tax-exempt organization, school, or school district.

(c) The license shall be issued to the person in charge of the group and shall be in that person's possession when the group is fishing.

(d) The license shall identify the location and the date or dates for which fishing is authorized, and the maximum number of people that may be included in the group that will be fishing. The license holder shall notify the local department office before sport fishing and indicate where, when, and how long the group will be sport fishing.

(e) Employees of the entity listed in subdivision (a) are exempt from Section 12900 while assisting the group that that is sport fishing pursuant to the license.

Comment. Section 13205 restates former Fish and Game Code Section 7151(d) without substantive change.

Note. Proposed Section 13205 is intended to restate existing Section 7151(d) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“7151.....

(d) Upon application to the department, the department may issue, free of any charge or fee, a sport fishing license to groups of mentally or physically handicapped persons under the care of a certified federal, state, county, city, or private licensed care center that is a community care facility as defined in subdivision (a) of Section 1502 of the Health and Safety Code, to organizations exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code, or to schools or school districts. Any organization that applies for a group fishing license shall provide evidence that it is a legitimate private licensed care center, tax-exempt organization, school, or school district. The license shall be issued to the person in charge of the group and shall be in his or her possession when the group is fishing. Employees of private licensed care centers, tax-exempt organizations, schools, or school districts are exempt from Section 7145 only

while assisting physically or mentally disabled persons fishing under the authority of a valid license issued pursuant to this section. The license shall include the location where the activity will take place, the date or dates of the activity, and the maximum number of people in the group. The licenseholder shall notify the local department office before fishing and indicate where, when, and how long the group will fish.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of existing Section 7151(d).

§ 13210. Free group sport fishing license for military personnel with injuries or disabilities

13210. (a) Upon application to the department, the department may issue, free of any charge or fee, a group sport fishing license to a nonprofit organization for day-fishing trips that provide recreational rehabilitation therapy for active duty members of the United States military who are currently receiving inpatient care in a military or Veterans Administration hospital and veterans with service-connected disabilities. To be eligible, the nonprofit organization shall be registered to do business in this state, or exempt from taxation under Section 501(c) of the federal Internal Revenue Code.

(b) The license shall be valid for the calendar year of issue or, if issued after the beginning of that year, for the remainder of that year.

(c) The license shall be issued to the person in charge of the group, and shall be in that person’s possession when the group is fishing.

(d) The organization shall notify the local department office before sport fishing, and indicate where, when, and for how long the group will be sport fishing.

Comment. Section 13210 continues former Fish and Game Code Section 7151(e) without substantive change.

Note. The Commission is unsure why this provision refers to “day-fishing trips.” That language sounds like a limitation. Is it intended as one?

The Commission invites input on this point.

§. Funding for free licenses

13215. (a) On January 15 of each year, the department shall determine the number of free sport fishing licenses in effect during the preceding year.

(b) There shall be appropriated from the General Fund a sum equal to two dollars (\$2) per free sport fishing license issued pursuant to Section 13200 or 13205 during the preceding license year. That sum may be appropriated annually in the Budget Act for transfer to the Fish and Game Preservation Fund, and appropriated in the Budget Act from the Fish and Game Preservation Fund to the department, for the purposes of provisions of this code governing sport fishing.

Comment. Section 13215 continues former Fish and Game Code Section 7151(f) and (g) without substantive change.

Note. The last clause of existing Fish and Game Code Section 7151(g) (which would be continued by proposed Section 13215) reads “for the purposes of this part,” referring to Part 2 (commencing with Section 7100) of Division 6 of the existing code. As in the proposed law the provisions of that part appear in several different locations, proposed Section 13215 would revise that clause to read “for the purposes of provisions of this code governing sport fishing.”

§ 13250. Second rod validation

Comment. Section 13250 continues former Fish and Game Code Section 7149.45(b) without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 6403 applicable to the provisions of this section.

Comment. Section 13260 continues the second sentence of former Fish and Game Code Section 7180.1(c) without substantive change.

thousand dollars (\$1,000), for a first offense. If a person is convicted of a violation of Section 12900 or a regulation requiring a license to be displayed within five years of a separate offense resulting in a conviction of a violation of Section 12900 or a regulation requiring a license to be displayed, that person shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000).

(b) If a person is convicted of a violation of Section 12900 or a regulation requiring a license to be displayed and produces in court a sport fishing license issued pursuant to Section 12900 that was valid at the time of the violation, and if the sport fishing was otherwise lawful, the court may reduce the fine imposed for the violation to twenty-five dollars (\$25).

(c) If a person is charged with a violation of Section 12900 or a regulation requiring a license to be displayed and produces in court a lifetime sport fishing license or sport fishing and hunting license issued in his or her name that was valid at the time of the violation, and if the sport fishing was otherwise lawful, the court may dismiss the charge.

(d) A person shall not be charged or convicted for both a violation of Section 12900 and a regulation requiring a license to be displayed for the same act.

Comment. Section 13300 continues former Fish and Game Code Section 12002.2 without substantive change.

Note. Existing Section 12002.2(c) (which would be continued by proposed Section 13300(c)) permits dismissal of a charged violation of existing Section 7145 (requiring possession of sport fishing license), if the person charged appears in court and produces a valid lifetime license issued in his or her name. Proposed Section 13300 would make clear that the lifetime license must have been valid at the time of the violation.

The Commission invites comment on whether this revision is problematic.

§ 13305. Fishing without required validation

13305. (a) Notwithstanding any other provision of law, a violation of Section 12905, 12910 or 12955 is an infraction, punishable by a fine of not less than fifty dollars (\$50), nor more than two hundred fifty dollars (\$250), for a first offense.

(b) If a person is convicted of a violation of Section 12905, 12910, or 12955 within five years of a separate offense resulting in a conviction of a violation of Section 12905, 12910, or 12955, that person shall be punished by a fine of not less than one hundred dollars (\$100), nor more than five hundred dollars (\$500).

(c) If a person is convicted of a violation of Section 12905, 12910 or 12955 and produces in court the required validation that was valid at the time of the violation, and if the sport fishing was otherwise lawful, the court may reduce the fine imposed for the violation to twenty-five dollars (\$25).

Comment. Section 13305 continues the part of former Fish and Game Code Section 12002.2.1 applicable to violations of former Fish and Game Code Sections 6596.1(a), 7149.45(a), and 7180.1(b) without substantive change. The reference to production in court of a Bay Delta sport fishing enhancement stamp or validation is discontinued as obsolete. See 2009 Cal. Stat. ch. 381, § 2 (repealing former Fish and Game Code Section 7360, authorizing issuance of those stamps and validations). The reference to production in court of a sport fishing ocean enhancement

1 stamp, a second rod sport fishing stamp, and a Colorado River special use stamp are also
2 discontinued as obsolete. See 2015 Cal. Stat. ch. 683, § 19, 23, and 25 (repealing former Fish and
3 Game Code sections authorizing issuance of those stamps).

4 The part of former Fish and Game Code Section 12002.2.1 applicable to a violation of Section
5 1.18 of Title 14 of the California Code of Regulations is discontinued as obsolete, as that section
6 was repealed on January 13, 2010.

7 CHAPTER 6. RECIPROCAL LICENSING

8 § 13350. Operation of chapter

9 13350. (a) This chapter shall remain effective so long as the commission finds
10 and determines that under the laws of the State of Arizona, substantially similar
11 Arizona licenses are authorized to be issued to licensees of this state, upon
12 substantially the same terms and conditions as are provided for in this chapter,
13 relating to the issuance of California licenses to licensees of the State of Arizona.

14 (b) If Arizona issues a resident sport fishing license for a term less than one year
15 for the purpose of changing to a calendar year license from a fiscal year license,
16 that license shall be deemed to be a license upon substantially the same terms and
17 conditions as are provided for the issuance of California licenses to licensees of
18 the State of Arizona, for the purposes of subdivision (a).

19 **Comment.** Subdivision (a) of Section 13350 continues former Fish and Game Code Section
20 7185 without substantive change.

21 Subdivision (b) continues former Fish and Game Code Section 7186.1(b) without substantive
22 change.

23 § 13355. Responsibilities of state commissions relating to licenses and special use stamps 24 and validations

25 13355. (a) The Arizona Game and Fish Commission shall handle California
26 sport fishing licenses and California special use validations and issue them
27 through Arizona license dealers. Prior to August 31 of each year, that commission
28 shall make an audit report and send a remittance for those sales to the department.

29 (b) The department shall handle Arizona special use validations and issue them
30 through California license dealers. Prior to August 31 of each year, the department
31 shall make an audit report and send a remittance for those sales to the Arizona
32 Game and Fish Commission.

33 **Comment.** Section 13355 continues former Fish and Game Code Section 7183.1(a) and (b)
34 without substantive change.

35 § 13360. Terms of special use validations

36 13360. (a) An Arizona special use validation is valid from January 1 to
37 December 31, inclusive, of each year, to coincide with the period for which a
38 California sport fishing license is issued.

39 (b) A California special use validation is valid for one year, to coincide with the
40 period for which an Arizona fishing license is issued.

1 **Comment.** Section 13360 continues former Fish and Game Code Section 7184.1(a) and (b)
2 without substantive change.

3 **§ 13365. Conditional provisions relating to California licenses and special use validations**

4 13365. When the director determines from the Secretary of State that copies of
5 the law of the State of Arizona have been received by the Secretary of State that
6 provides for an Arizona resident sport fishing license valid for a period of less than
7 one year, a California special use validation valid for the same period as the
8 Arizona resident sport fishing license may be issued for a fee of one dollar (\$1).

9 **Comment.** Section 13365 continues former Fish and Game Code Section 7186.1(a) without
10 substantive change.

11 CHAPTER 7. ISSUANCE

12 **§ 13400. Compensation for license agent**

13 13400. California sport fishing license validations shall be issued by authorized
14 license agents in the same manner as sport fishing licenses, and no compensation
15 shall be paid to the authorized license agent for issuing a validation, except as
16 provided in Section 3350.

17 **Comment.** Section 13400 combines and continues former Fish and Game Code Section
18 7149.05(b) without substantive change.

19 **§ 13405. Colorado River special use validations**

20 13405. (a) Arizona Colorado River special use validations shall be issued by
21 California authorized license agents under the supervision of the department in the
22 same manner as sport fishing licenses are issued, and California sport fishing
23 licenses and California Colorado River special use validations shall be issued by
24 Arizona license dealers under the supervision of the Arizona Game and Fish
25 Commission.

26 (b) This section shall remain effective so long as the commission finds and
27 determines that under the laws of the State of Arizona, substantially similar
28 Arizona licenses are authorized to be issued to licensees of this state, upon
29 substantially the same terms and conditions as are provided for in this chapter,
30 relating to the issuance of California licenses to licensees of the State of Arizona.

31 **Comment.** Subdivision (a) of Section 13405 continues former Fish and Game Code Section
32 7182.1(a) without substantive change.

33 Subdivision (b) continues the effect of former Fish and Game Code Section 7185 as that
34 provision applied to former Fish and Game Code Section 7182.1. See Section 13350(a).

TITLE 3. TAKE LIMITS

§ 13500. Bag limits

13500. It is unlawful for a person to possess more than one daily bag limit of any fish, amphibian, or reptile taken by sport fishing, unless authorized by regulations adopted by the commission.

Comment. Section 13500 continues former Fish and Game Code Section 7120 without substantive change, except to add references to amphibians and reptiles.

Notes. (1) By its terms, existing Section 7120 only applies to fish taken pursuant to a sport fishing license. Read literally, that makes the bag limit inapplicable to fish taken by persons who are not required to hold a license and to those who illegally take fish without a license. It seems unlikely that the provision was intended to include such exemptions. Proposed Section 13500 would remove them.

The Commission invites comment on whether this revision of existing Section 7120 would change the intended substantive meaning of the provision.

(2) Proposed Section 13500 would revise existing Section 7120 make the provision expressly applicable to amphibians and reptiles.

The Commission invites comment on the appropriateness of this revision.

TITLE 4. COMMERCE

§ 13600. Unauthorized purchase or sale

13600. Except as otherwise provided by this code or by regulation, it is unlawful to buy or sell a fish or amphibian that was taken in, brought into, or brought ashore from, any waters of the state.

Comment. Section 13600 continues the first paragraph of former Fish and Game Code Section 7121 without substantive change.

Note. The Commission invites comment on whether existing Section 7121 should be revised to apply to reptiles.

§ 13605. Disposition of fish or amphibians caught on sport fishing vessel

13605. (a) In any place of business where fish are bought, sold, or processed, it is unlawful to buy, sell, or possess a fish or amphibian that was taken by sport fishing on a boat, barge, or vessel.

(b) Subdivision (a) does not apply to possession for the purposes of canning or smoking pursuant to regulations adopted by the commission.

Comment. Section 13605 restates the second paragraph of former Fish and Game Code Section 7121 without substantive change.

Note. Proposed Section 13605 is intended to restate the second paragraph of existing Fish and Game Code Section 7121 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“7121.....

It is unlawful to buy, sell, or possess in any place of business where fish are bought, sold, or processed, any fish or amphibia taken on any boat, barge, or vessel which carries sport fishermen,

except those fish may be possessed in such a place only for the purposes of canning or smoking under regulations adopted by the commission.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 13610. Punishment for violation of Section 13600 or 13605 in specified circumstances

13610. (a) Notwithstanding any other provision of law, a violation of Section 13600 or 13605 by a person required to be licensed pursuant to Section 12900 is punishable by a fine of not less than two thousand dollars (\$2,000) or more than seven thousand five hundred dollars (\$7,500), except as provided in subdivisions (b) or (c).

(b) If the violation in question involved the illegal sale or purchase of abalone taken by a person required to be licensed pursuant to Section 12900, the violation is punishable by a fine of not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000).

(c) A violation of Section 13600 or 13605 by a person who for a commercial purpose knowingly purchases or receives a fish or amphibian taken by a person required to be licensed pursuant to Section 12900 is punishable by a fine of not less than seven thousand five hundred dollars (\$7,500) or more than fifteen thousand dollars (\$15,000).

Comment. Section 13610 continues former Fish and Game Code Section 12002.3 without substantive change.

Notes. (1) Proposed Section 13610 would make the punishment prescribed by existing Section 12002.3(c) for the specified violation of existing Section 7121 expressly applicable to an amphibian as well as fish, consistent with the prohibition in Section 7121.

The Commission invites comment on whether this revision of the existing section is problematic.

(2) Existing Section 12002.3(b) (which would be continued by proposed Section 13610(b)), provides a special penalty that applies if “the violation in question” involves abalone. It is not entirely clear whether that provision in Section 12002.3(b) is intended to refer to a violation described by existing Section 12002.3(a) (which would be continued by proposed Section 13610(a)), a violation described by existing Section 12002.3(c) (which would be continued by proposed Section 13610(c)), or both.

The Commission invites public comment on whether that apparent ambiguity is a problem in practice, and if so, how it should be resolved.

TITLE 5. PROCESSING AND WASTE

§ 13700. Canning or smoking

13700. (a) Subject to Sections 13600 and 13605, fish taken by lawful sport fishing may be canned or smoked by a fish cannery or processor.

(b) Any cannery or packing plant in which fish taken by lawful sport fishing are canned shall emboss or imprint on the top of each can the words “not to be sold” in letters of such size as to be clearly legible, and the embossment or imprint shall remain affixed to the can.

(c) Any cannery or packing plant in which fish taken by lawful sport fishing are smoked shall permanently imprint on each package the words “not to be sold” in letters of such size as to be clearly legible, and the imprint shall remain visible on the package.

(d) Fish that are canned or smoked under this section shall not be sold, purchased, or offered for sale.

Comment. Section 13700 continues former Fish and Game Code Section 7230 without substantive change.

Note. Proposed Section 13700 would revise existing Section 7230 to allow a fish cannery or processor to can or smoke fish taken by lawful sport fishing, rather than pursuant to a sport fishing license. The revision would clarify that the provision is applicable to fish lawfully taken by persons who are not required to obtain a sport fishing license (e.g., persons under 16).

The Commission invites comment on the appropriateness of this revision.

§ 13705. Fish offal

13705. (a) Notwithstanding Sections 13600 and 13605, offal from a fish taken by lawful sport fishing that is delivered to a fish canner or fish processor may be processed, used, or sold by that fish canner or fish processor.

(b) Nothing in this section authorizes the sale or purchase of a fish.

Comment. Section 13705 continues former Fish and Game Code Section 7232 without substantive change. A reference to a “portion” of a fish is deleted as superfluous. See Section 95 (reference to animal generally includes part of animal).

Note. Proposed Section 13705 would revise existing Section 7232 to allow a fish cannery or processor to accept offal from fish taken by lawful sport fishing, rather than pursuant to a sport fishing license. The revision would clarify that the provision is applicable to offal from fish lawfully taken by persons who are not required to obtain a sport fishing license (e.g., persons under 16).

The Commission invites comment on the appropriateness of this revision.

§ 13710. Deterioration and waste

13710. The commission may adopt regulations to prevent deterioration and waste of fish taken by sport fishing, and to regulate the disposal of the offal of that fish.

Comment. Section 13710 continues former Fish and Game Code Section 5510 without substantive change.

TITLE 6. SPORT FISHING REGULATIONS

§ 13800. Conforming to federal regulations

13800. (a) The commission may establish by regulation an automatic process to conform its sport fishing regulations to federal regulations.

(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to conforming actions implemented pursuant to the automatic process specified in subdivision (a).

(c) The department shall provide public notice of a conforming action implemented pursuant to this section.

Comment. Section 13800 continues former Fish and Game Code Section 7110 without change.

§ 13805. Conforming of sport fishing regulations to federal regulations

13805. (a) The department shall identify property it owns or manages that includes areas for sport fishing accessible to persons with disabilities.

(b) Commencing with the booklet of sport fishing regulations published by the commission in 1986, the availability of sport fishing areas, identified by the department as accessible to persons with disabilities under subdivision (a), shall be noted in the booklet of regulations, together with telephone numbers and instructions for obtaining a list of those areas from regional department offices.

(c) Commencing with the booklet of sport fishing regulations published in 1987, the booklet shall also contain any human health advisories relating to fish that are formally issued by the State Department of Public Health, or summaries of those human health advisories. The summaries shall be prepared in consultation with the State Department of Public Health.

Comment. Section 13805 continues former Fish and Game Code Section 7115 without change.

TITLE 7. SPECIAL PROGRAMS

CHAPTER 1. BAY-DELTA SPORT FISHING ENHANCEMENT STAMP

§ 13900. Deposit and use of funds

13900. (a) Fees received by the department from the sale of the Bay-Delta Sport Fishing Enhancement Stamp or validation shall be deposited in a separate account in the Fish and Game Preservation Fund. The Bay-Delta Sport Fishing Enhancement Stamp or validation shall not be required, and no fee shall be collected, as of January 1, 2010.

(b) The department shall expend the funds in that account for the long-term, sustainable benefit of the primary Bay-Delta sport fisheries, including, but not limited to, striped bass, sturgeon, black bass, halibut, salmon, surf perch, steelhead trout, and American shad. Funds shall be expended to benefit sport fish populations, sport fishing opportunities, and anglers within the tidal waters of the San Francisco Bay Delta and the main stem of the Sacramento and San Joaquin Rivers, including major tributaries, below the most downstream dam, and consistent with the requirements of the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) and the California Endangered Species Act (**Chapter 1.5 (commencing with Section 2050) of Division 3**), the ecosystem restoration component of the CALFED Programmatic Record of Decision dated August 28, 2000, and applicable commission policies.

1 (c) It is the intent of the Legislature that these funds be used to augment, not
2 replace, funding that would otherwise be allocated to Bay-Delta sport fisheries
3 from the sale of fishing licenses, the California Bay-Delta Authority, or other
4 federal, state, or local funding sources.

5 **Comment.** Section 13900 continues former Fish and Game Code Section 7361 without
6 substantive change.

7 **§ 13905. Advisory committee**

8 13905. (a) The director shall appoint a Bay-Delta Sport Fishing Enhancement
9 Stamp Fund Advisory Committee, consisting of nine members. The committee
10 members shall be selected from names of persons submitted by anglers and
11 associations representing Bay-Delta anglers of this state and shall serve at the
12 discretion of the director for terms of not more than four years. The director shall
13 appoint persons to the committee who possess experience in subjects with specific
14 value to the committee and shall attempt to balance the perspective of different
15 anglers.

16 (b) The advisory committee shall recommend to the department projects and
17 budgets for the expenditure of the funds from the account established in Section
18 13900. The department shall give full consideration to the committee's
19 recommendations.

20 (c) The department shall submit to the advisory committee and the Chief Clerk
21 of the Assembly and the Secretary of the Senate for distribution to the appropriate
22 fiscal and policy committees of the Legislature, at least annually, on or before
23 January 10 of each year, an accounting of funds derived from the Bay-Delta Sport
24 Fishing Enhancement Stamps and validations, including the funds generated and
25 expended and administrative expenditures, and the status of programs funded
26 pursuant to this article. In addition, the department shall report, at least annually,
27 to the committee on the status of projects undertaken with funds from that stamp
28 or validation, including reporting the department's reasoning in cases where
29 committee recommendations are not followed.

30 (d) The department shall post on its Internet Web site projects undertaken with
31 funds from the account established in Section 13900. At a minimum, the Internet
32 Web site shall list the project title, applicant, a brief description of the project, the
33 amount approved, and the project's status.

34 **Comment.** Section 13905 continues former Fish and Game Code Section 7363 without
35 substantive change.

36 **§ 13910. Grant program**

37 13910. (a) The department, in consultation with the advisory committee created
38 pursuant to Section 13905, shall develop a grant program to support activities
39 consistent with Section 13900.

40 (b) The department, in consultation with the advisory committee, shall develop
41 priority areas for funding under the grant program. The department shall give the

1 advisory committee an opportunity to review any draft public solicitation notice
2 before that notice is finalized and released to the public.

3 (c) The advisory committee shall assist the department in providing outreach to
4 encourage wide participation in the grant program.

5 (d) The department shall provide the advisory committee a copy of all grant
6 applications. The advisory committee shall have a minimum of 30 days to review
7 projects and provide recommendations to the department.

8 **Comment.** Section 13910 continues former Fish and Game Code Section 7362 without
9 substantive change.

10 **§ 13915. Additional responsibilities of department**

11 13915. (a) The department shall do all of the following:

12 (1) In consultation with the advisory committee, develop a spending plan that
13 focuses on identifying and funding viable projects and monitoring revenues to
14 assist the department in effectively expending available stamp revenues in a
15 manner consistent with the purposes described in Section 13900. The spending
16 plan shall be completed by January 31, 2010. Upon completion, a copy of the
17 spending plan shall be provided to the Legislature.

18 (2) Track and report the costs of projects funded pursuant to this article by doing
19 both of the following:

20 (A) Improve the tracking of individual project expenditures by assigning a
21 separate account to each project within the department's accounting system.

22 (B) Require a project manager to approve all expenditures directly related to the
23 manager's projects, periodically reconcile records for each project with accounting
24 records, and report expenditures to staff responsible for preparing advisory
25 committee reports.

26 (3) Reimburse the department's general fund appropriation for any lease
27 payment charged to the department's general fund appropriation on or before
28 January 1, 2010, that was eligible to be paid from the account established in
29 Section 13900.

30 (4) Ensure that employees of the department appropriately charge their time to
31 projects funded pursuant to this article by providing guidelines to employees
32 concerning when to charge activities to the account established in Section 13900.

33 (b) The department shall not charge payroll costs to the account established in
34 Section 13900 for employee activities that are not related to the implementation of
35 this article. The department shall determine whether any other expenditure has
36 been inappropriately charged to the account established in Section 13900 and shall
37 make all necessary accounting adjustments.

38 **Comment.** Section 13915 continues former Fish and Game Code Section 7364 without
39 substantive change.

PART 6. COMMERCIAL FISHING AND RELATED ACTIVITY

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. APPLICATION

§ 14200. Application of part

14200. (a) The provisions of this part apply to the taking and possession of fish for any commercial purpose.

(b) This part does not apply to activities governed by Part 1 (commencing with Section 23300) of Division 7.

(c) The provisions of this code governing commercial fishing, packing, or processing licenses, reports by persons engaged in the commercial fish industry, and statements required by owners or operators of fishing boats do not apply to the taking, transporting, or selling of live freshwater fish for bait.

Comment. Subdivisions (a) and (b) of Section 14200 continues former Fish and Game Code Section 7600 without substantive change.

Subdivision (c) continues the fourth paragraph of former Fish and Game Code Section 8460 without substantive change.

§ 14205. Application of other provisions

14205. Commercial fishing and related activity are also governed by Part 4 (commencing with Section 11500).

Comment. Section 14205 is new. It is added for drafting convenience.

§ 14210. General authority for commercial take

14210. All fish, the taking of which is not otherwise restricted for commercial purposes, by state or federal law or any regulations adopted pursuant to those laws, may be taken at any time for commercial purposes.

Comment. Section 14210 continues former Fish and Game Code Section 8140 without change.

CHAPTER 2. PROHIBITIONS

§ 14300. Prohibition against use of gear to take fish except as authorized

14300. It is unlawful to use or operate, or assist in using or operating, any net, trap, line, spear, or device, other than in connection with angling, in taking fish, except as provided in this code.

Comment. Section 14300 continues former Fish and Game Code Section 8603 without substantive change.

Notes. (1) Existing Fish and Game Code Section 8603 is located in Part 3 of Division 6 of the existing code. The first section of Part 3 is Section 7600, which provides, “The provisions of this part apply to the taking and possession of fish for any commercial purpose.”

Based on Section 7600, the prohibition in Section 8603 (which would be continued by proposed Section 14300) applies only to the taking or possession of fish *for a commercial purpose*. However, it appears that the Department of Fish and Wildlife may read the prohibition in Section 8603 more broadly, as its 2015-16 *Ocean Sport Fishing* Regulations booklet reminds readers, on page 53, that “It is unlawful to do the following:... Use or possess any net in state waters except as is authorized. (FGC, Section 8603).”

The Commission invites comment on whether proposed Section 14300 should be made applicable to both sport fishing and commercial fishing, and relocated to a part of the proposed law applicable to fishing generally.

(2) As written, existing Section 8603 contains a blanket prohibition against the use of any type of net to take a fish, except in connection with angling, or as provided in Chapter 3 or Chapter 4 of Part 3 of Division 6 of the existing code. However, this exception may be too narrow. There are other provisions of the code not located in either of those two chapters that appear to authorize commercial fishers to use nets to take fish in non-angling situations. See, e.g., existing Sections 8183(e) (bait net may be used to take anchovies), 8561(b) (drift gill net of specified size may be used to take shark and swordfish).

The Commission invites comment on whether proposed Section 14300 should be revised to resolve that statutory conflict.

(3) In a handful of provisions of the existing code, most of which were enacted in 1957 (including existing Fish and Game Code Section 8603), the undefined terms “appliance” or “apparatus” seem to be used generically to refer to any kind of device. As both terms are presently understood to have somewhat different or more specific meanings, the Commission has proposed to substitute the word “device” for both terms (substituting that word in proposed Section 10500 for the term “appliance” in existing Section 8603).

The Commission invites comment on whether that substitution is problematic.

§ 14305. Interference with use of fishing gear

14305. (a) It is unlawful to willfully disturb or damage a net, trap, or other device that is being lawfully used to take fish in waters of this state.

(b) This section does not apply to a department employee engaged in the performance of official duties.

Comment. Section 14305 continues former Fish and Game Code Section 8604 without substantive change.

Notes. (1) Existing Fish and Game Code Section 8604 is located in Part 3 of Division 6 of the existing code. The first section of Part 3 is Section 7600, which provides, “The provisions of this part apply to the taking and possession of fish for any commercial purpose.”

Based on Section 7600, the prohibition in Section 8604 (which would be continued by proposed Section 14305) therefore arguably applies *only* to disturbing or damaging gear being used to take fish for a *commercial* purpose. Is that how the provision is understood to apply?

The Commission invites comment on whether proposed Section 14305 should apply only to disturbing or damaging gear being used for commercial fishing, or whether it should apply to all fishing gear.

(2) In a handful of provisions of the existing code, most of which were enacted in 1957 (including existing Fish and Game Code Section 8604), the undefined terms “appliance” or “apparatus” seem to be used generically to refer to any kind of device. As both terms are presently understood to have somewhat different or more specific meanings, the Commission has proposed to substitute the word “device” for both terms (substituting that word in proposed Section 14305 for the term “apparatus” in existing Section 8604).

The Commission invites comment on whether that substitution is problematic.

1 **§ 14310. Deterioration or waste**

2 14310. It is unlawful to cause or permit deterioration or waste of a fish taken in
3 the waters of this state, or brought into this state, or to take, receive, or agree to
4 receive more fish than can be used without deterioration, waste, or spoilage.

5 **Comment.** Section 14310 continues former Fish and Game Code Section 7704(a) without
6 change.

7 **TITLE 2. COMMERCIAL FISHING**

8 **CHAPTER 1. LICENSE AND RELATED ENTITLEMENTS**

9 **Article 1. Requirements**

10 **§ 14500. Activity requiring license**

11 14500. (a) Except for persons expressly exempted under this code, no person
12 shall engage in any of the following activities without a commercial fishing
13 license:

14 (1) Using, operating, or assisting in using or operating, any boat, aircraft, net,
15 trap, line, or other device, to take a fish or amphibian, for a commercial purpose.

16 (2) Bringing, or contributing to bringing, a fish or amphibian ashore, for the
17 purpose of selling the fish or amphibian in a fresh state.

18 (3) Materially contributing to the activities on board the commercial fishing
19 vessel.

20 (b) Any person on board a commercial fishing vessel who is not required under
21 subdivision (a) to hold a commercial fishing license shall register his or her
22 presence on board the vessel in a log that is maintained by the owner or operator
23 of the vessel pursuant to the requirements of the department.

24 (c) As used in subdivisions (a) and (b), the term “person” means a natural person
25 16 years of age or greater.

26 (d) This section does not apply to any of the following persons:

27 (1) The holder of a live freshwater bait fish license issued pursuant to Section
28 22100 when taking, transporting, or selling live freshwater fish for bait.

29 (2) A person employed by a fish receiver to unload fish or fish products, or load
30 or unload food and supplies, on or from a commercial fishing boat at a dock.

31 **Comment.** Subdivision (a) of Section 14500 continues former Fish and Game Code Section
32 7850(a) without substantive change.

33 Subdivision (b) continues former Fish and Game Code Section 7850(b) without substantive
34 change.

35 Subdivision (c) continues the first sentence of former Fish and Game Code Section 7850(c)
36 without substantive change.

37 Paragraph (1) of subdivision (d) continues former Fish and Game Code Section 7850(d)
38 without substantive change.

39 Paragraph (2) of subdivision (d) continues former Fish and Game Code Section 7850.5 without
40 substantive change.

Note. Existing Fish and Game Code Section 7850(c) (which would be continued by proposed Section 14500(c)) provides that the “persons” to whom the section applies do not include “persons who are less than 16 years of age, a partnership, corporation, or association.” This language, if interpreted literally, would indicate that the section may apply to other business entities, such as a limited liability company or trust. See existing Fish and Game Code Section 67 (“person” means “any natural person or any partnership, corporation, limited liability company, trust, or other type of association.”)

This application appears inadvertent, as several other sections of the code relating to commercial fishing licenses make clear that the licensee must be a natural person. See, e.g., existing Sections 7851 (application for license must indicate applicant’s sex, height, weight, and eye and hair color), 7852.27 (when engaging in licensed activity, licensee must also have in his or her possession a valid driver’s license, identification card, or passport).

Proposed Section 14500 would revise existing Section 7850(c) to indicate that the term “person” as used in the section includes only natural persons.

The Commission invites comment on the appropriateness of that revision.

§ 14505. Possession and display of identification

14505. (a) At all times when engaged in any activity for which a commercial fishing license is required, the licensee shall have in his or her possession, or immediately available to the licensee, a valid driver’s license or identification card issued to him or her by the Department of Motor Vehicles, or by the entity issuing driver’s licenses from the licensee’s state of domicile.

(b) A current passport may be used in lieu of a valid driver’s license or identification card by a holder of a valid nonresident commercial fishing license issued pursuant to this chapter.

(c) The licensee’s driver’s license, identification card or, if applicable, passport shall be exhibited upon demand to any person authorized by the department to enforce this code, or regulations adopted pursuant to this code.

Comment. Section 14505 continues the part of former Fish and Game Code Section 7852.27 applicable to commercial fishing licenses without substantive change.

Article 2. Issuance

§ 14550. Additional application requirements for license

14550. (a) An applicant for a commercial fishing license must be at least 16 years of age on the date the license is issued.

(b) An application for a commercial fishing license shall state the applicant’s sex, age, height, weight, the color of eyes and hair, and whether or not the applicant is a citizen of the United States.

(c) Nothing in this section affects any other provision of law relating to the employment of minors.

Comment. Subdivision (a) of Section 14550 continues a part of former Fish and Game Code Section 7852(a) and (b) without change.

Subdivision (b) continues former Fish and Game Code Section 7851 without substantive change.

Subdivision (c) continues former Fish and Game Code Section 7852(e) without substantive change.

1 **§ 14555. Denial of application based on prior dishonored check**

2 14555. Notwithstanding any other provision of law, an application for the
3 issuance or renewal of a commercial fishing entitlement may be denied by the
4 department if, within the preceding year the applicant for the issuance or renewal
5 has presented a check to the department that was dishonored by the bank upon
6 which the check was drawn, and the person has not reimbursed the department for
7 the amount due plus any dishonored check charges incurred by the department,
8 and paid an additional fee of thirty (\$30) dollars.

9 **Comment.** Section 14555 continues the part of former Fish and Game Code Section 7852.25
10 applicable to licenses and other entitlements related to commercial fishing without substantive
11 change.

12 **§ 14560. Conditions of license or other entitlement**

13 14560. Unless otherwise specified, the following conditions apply to a
14 commercial fishing entitlement:

15 (a) An applicant for a commercial fishing entitlement other than a commercial
16 fishing license shall have a valid commercial fishing license issued pursuant to this
17 chapter that is not revoked or suspended.

18 (b) The person to whom the commercial fishing entitlement is issued shall be
19 present when fish are being taken, possessed aboard a boat, or landed for a
20 commercial purpose.

21 (c) The commercial fishing entitlement shall be in the possession of the person
22 issued the entitlement, or immediately available to that person, at all times when
23 that person is engaged in any activity for which the entitlement is required.

24 (d) A person may not hold more than one individual commercial fishing
25 entitlement of a single type at the same time.

26 (e) Any landing of fish used to qualify for, or renew, a commercial fishing
27 entitlement shall be reported on a landing receipt that is delivered to the
28 department pursuant to Section 21150.

29 (f) A person or entity issued a commercial fishing entitlement shall comply with
30 all applicable requirements of Title 10 (commencing with Section 20900).

31 (g) The name of the person issued a commercial fishing entitlement authorizing
32 the taking of fish shall be included on the landing receipt for any landing of fish.

33 (h) An applicant for a commercial fishing entitlement shall provide the
34 information required by the department on the application form.

35 (i) A commercial fishing entitlement shall be signed by the holder prior to use.

36 (j) A person whose commercial fishing entitlement to engage in a fishery is
37 suspended or revoked shall not engage in that fishery, and shall not obtain another
38 commercial fishing entitlement that authorizes engaging in that fishery, while the
39 suspension or revocation is in effect.

40 (k) A commercial fishing entitlement is not transferable, unless otherwise
41 expressly specified in this code.

(l) A commercial fishing entitlement is valid from April 1 to March 31 of the next following calendar year or, if issued after the beginning of that term, for the remainder of that term.

(m) A person who moves or acquires a new address after being issued a commercial fishing entitlement shall notify the department of the old and new addresses within three months of moving or acquiring the new address.

Comment. Section 14560 continues the part of former Fish and Game Code Section 7857(a), (c)-(k), and (m) applicable to commercial fishing without substantive change.

Note. Proposed Section 14560(h) is intended to restate the first sentence of existing Fish and Game Code Section 7857(h) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“An application for a commercial fishing license, permit, or other entitlement shall be made on a form containing the information the department may require.”

The Commission invites comment on whether the restatement of this provision in proposed Section 14560(h) would substantively change its intended meaning.

§ 14565. Additional conditions for limited entry fishery permit

14565. In addition to the conditions specified in Sections 14560, 14650, 14760, 14850, 14855, and 14865, the following conditions apply to a permit, other than a permit issued pursuant to Section 40350, to take, possess aboard a boat, or land fish for commercial purposes in a limited entry fishery, as defined in Section 495:

(a) The permit shall be renewed annually.

(b) Except as otherwise provided by law, an appeal of a denial of renewal application, or for a waiver of a landing requirement, shall be reviewed and decided by the department.

(c) The appeal shall be received by the department or, if mailed, postmarked, on or before March 31 following the permit year in which the appellant last held a valid permit for that fishery.

(d) The decision of the department may be appealed to the commission.

Comment. Section 14565 continues former Fish and Game Code Section 7858 without substantive change.

Article 3. Fees

§ 14600. Fee

14600. (a) The fee for a commercial fishing license is as follows:

(1) For a resident, a base fee of ninety-five dollars (\$95).

(2) For a nonresident, a base fee of two hundred eighty-five dollars (\$285).

(b) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 3755.

(c) The commission shall adjust the amount of the fees specified in subdivision (b), as necessary, to fully recover, but not exceed, all reasonable administrative

1 and implementation costs of the department and the commission relating to those
2 licenses.

3 **Comment.** Section 14600 continues former Fish and Game Code Section 7852(a)-(d) without
4 substantive change.

5 **Note.** Proposed Section 14600(a) is intended to restate existing Fish and Game Code Section
6 7852(a)-(b) to clarify the meaning of those provisions, without changing their substantive effect.
7 The existing provisions read as follows:

8 “(a) The department shall issue a commercial fishing license to any resident who is 16 years of
9 age or older, upon payment of a base fee of ninety-five dollars (\$95) for each resident vessel
10 crewmember or resident vessel operator.

11 (b) The department shall issue a commercial fishing license to any nonresident who is 16 years
12 of age or older, upon payment of a base fee of two hundred eighty-five dollars (\$285) for a
13 nonresident vessel crewmember or nonresident vessel operator.”

14 **The Commission invites comment on whether the restatement of existing Section 7852(a)-**
15 **(b) in proposed Section 14600(a) would substantively change the intended meaning of the**
16 **existing provisions.**

17 **§ 14605. Late fee for renewal after deadline**

18 14605. Notwithstanding any other provision of law, a commercial fishing
19 entitlement for which there is a renewal deadline shall not be renewed after that
20 deadline, except as follows:

21 (a) In addition to the base fee for the entitlement, the department shall assess a
22 late fee for any renewal application that is received after the deadline, according to
23 the following schedule:

24 (1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars
25 (\$125).

26 (2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars
27 (\$250).

28 (3) Sixty-one days or more after the deadline, a fee of five hundred dollars
29 (\$500).

30 (b) The department shall not waive the applicable late fee. The late fees
31 specified in subdivision (a) are applicable to the 2008 license year, and shall be
32 adjusted annually thereafter pursuant to Section 3755.

33 (c) The department shall deny any application for renewal received after March
34 31 of the permit year following the year in which the applicant last held a valid
35 permit for that fishery.

36 (d) An applicant who is denied renewal of a late application by the department
37 may submit a written appeal of the denial to the commission, within 60 days of the
38 date of the department’s denial. The commission, upon consideration of the
39 appeal, may grant the renewal. If the commission grants the renewal, it shall assess
40 the applicable late fee pursuant to subdivision (a).

41 **Comment.** Section 14605 continues former Fish and Game Code Section 7852.2 without
42 substantive change.

1 **Note.** It is unclear whether the application of existing Fish and Game Code Section 7852.2(c)
2 (which would be continued by proposed Section 14605(c)), is intended to be limited to
3 applications for renewal of permits, or is also meant to apply to applications for renewal of any
4 other entitlements.

5 **The Commission invites comment on this question.**

6 **§ 14610. Refund of fee based on death**

7 14610. (a) The department may refund the fee paid for a commercial fishing or
8 entitlement to the estate of the deceased holder of the entitlement, if proof is
9 provided by the estate that the death of the holder occurred prior to the opening of
10 the season for which the entitlement was valid.

11 (b) The department may deduct from the refund an amount equal to the cost of
12 issuing the refund, not to exceed twenty-five dollars (\$25).

13 **Comment.** Section 14610 continues the part of former Fish and Game Code Section 7852.1
14 applicable to commercial fishing licenses and other entitlements without substantive change.

15 **§ 14615. Payment of fee by another**

16 14615. Any person, partnership, corporation, limited liability company, or
17 association may pay the fee for a commercial fishing entitlement issued to any
18 person.

19 **Comment.** Section 14615 generalizes the second sentence of former Fish and Game Code
20 Section 7850(c).

21 **Note.** Existing Fish and Game Section 7850(c) provides that business entities can pay for a
22 commercial fishing license for any person. This makes sense, as it allows businesses to pay for
23 licenses for their employees. The Commission sees no policy reason why this provision should
24 not be extended to other commercial fishing entitlements, as employees might also be required to
25 obtain those entitlements. Proposed Section 14615 has therefore been generalized to apply to all
26 commercial fishing entitlements.

27 **The Commission invites comment on this change.**

28 **§ 14620. Commercial fishing ocean enhancement validation**

29 14620. (a) The base fee for a commercial fishing ocean enhancement validation
30 is thirty-five dollars (\$35). That base fee is applicable to the 2004 license year, and
31 shall be adjusted annually thereafter pursuant to Section 3755.

32 (b) The commission shall adjust the amount of the fee specified in subdivision
33 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
34 and implementation costs of the department and the commission relating to the
35 validation.

36 **Comment.** Subdivision (a) of Section 14620 continues former Fish and Game Code Section
37 6596.1(d) and (f) without substantive change.

38 Subdivision (b) continues former Fish and Game Code Section 6596.1(g) without substantive
39 change.

Article 4. Suspension and Revocation

§ 14650. Suspension or revocation

14650. The commission, after notice and opportunity for hearing, may suspend, revoke, or cancel a commercial fishing entitlement for a period of time to be determined by the commission, for any of the following reasons:

(a) The person issued the commercial fishing entitlement was not lawfully entitled to it.

(b) A provision of this code, a term of the entitlement, or a regulation adopted pursuant to this code was violated, by the person issued the entitlement, or his or her agent, employee, or person acting under his or her direction or control.

(c) A federal law relating to the fishery for which the entitlement was issued was violated, by the person issued the entitlement, or his or her agent, employee, or person acting under his or her direction or control.

Comment. Section 14650 continues former Fish and Game Code Section 7857(b) without substantive change.

§ 14655. License revocation or suspension proceeding at commission meeting

14655. A proceeding to revoke or suspend a commercial fishing license shall be conducted at a regularly scheduled commission meeting.

Comment. Section 14655 continues former Fish and Game Code Section 7855 without substantive change.

§ 14660. License forfeiture

14660. A commercial fishing license is forfeited for the violation of Section 2300, 2815, 2820, 2920, 2930, 3050, 8300, or 10205, or of any of the provisions of this code relating to the use of nets.

Comment. Section 14660 continues former Fish and Game Code Section 12153 without substantive change.

Note. Existing Section 12153, which was last amended by 2015 Cal. Stat. ch. 683, cross-refers to a range of existing code sections identified as “Sections 1050.1 to 1060, inclusive.” However, Section 1060 was repealed by that same bill, and the substance of Section 1060 does not appear to have been continued elsewhere in the code. The code section that numerically preceded Section 1060 in the existing code at the time Section 12153 was last amended was Section 1059. Proposed Section 14660 therefore cross-refers to the sections of the proposed law that continue provisions that are numerically between existing Sections 1050.1 and 1059, inclusive, that describe conduct engaged in by the holder of a commercial fishing license.

The Commission seeks comment on whether this continuation of existing Section 12153 is appropriate.

§ 14665. Approaching federal vessel

14665. (a) The commission may suspend or revoke the commercial fishing license of any licensee who operates a vessel in waters within the territorial jurisdiction of the State and approaches:

(1) Within 500 yards of any vessel owned or operated by the United States Government or any department or agency thereof, except when necessary to comply with the laws or rules of navigation governing the safe movement of vessels; or

(2) So close to any vessel owned or operated by the United States or any department or agency thereof and engaged in transporting naval or military equipment or personnel as to interfere with such transportation or to enable the observation thereof, except when necessary to comply with the laws or rules of navigation governing the safe movement of vessels.

(b) No license shall be suspended or revoked pursuant to this section until the filing of a complaint with the commission by any of the following:

(1) The commanding officer of a vessel owned or operated by the United States or any department or agency thereof.

(2) Any other officer of any such vessel who is authorized by his commanding officer to file such complaint.

(3) Any commanding officer of any military or naval activity affected by the licensee's operation of a vessel, or any other officer of such activity authorized by such commanding officer to file a complaint.

Comment. Subdivision (a) of Section 14665 continues former Fish and Game Code Section 7853 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 7854 without substantive change.

CHAPTER 2. COMMERCIAL FISHING VESSELS

Article 1. Boat Registrations and Other Vessel Permits

§ 14750. Application of article

14750. This article does not apply to a person required to be licensed as a guide pursuant to Section 8805.

Comment. Section 14750 continues former Fish and Game Code Section 7881(e) without substantive change.

§ 14755. Activity requiring registration

14755. Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this state, or to bring fish into this state, or who, for profit, permits persons to fish from the vessel, shall submit an application for commercial boat registration on forms provided by the department, and shall be issued a registration number.

Comment. Section 14755 continues former Fish and Game Code Section 7881(a) without substantive change.

1 **§ 14760. Term**

2 14760. A commercial boat registration or other entitlement issued pursuant to
3 this part authorizing the use of a vessel, is valid from April 1 to March 31 of the
4 next following calendar year or, if issued after the beginning of that term, for the
5 remainder of that term.

6 **Comment.** Section 14760 continues the part of former Fish and Game Code Section 7857(k)
7 applicable to commercial boat registrations and related entitlements without substantive change.

8 **§ 14765. Fee for registration**

9 14765. (a) The fee for a commercial boat registration is as follows:

10 (1) For a resident owner or operator of a vessel, a base fee of two hundred fifty
11 dollars (\$250).

12 (2) For a nonresident owner or operator of a vessel, a base fee of seven hundred
13 fifty dollars (\$750).

14 (b) The base fees specified in subdivision (a) are applicable to the 2004 license
15 year, and shall be adjusted annually thereafter pursuant to Section 3755.

16 (c) The commission shall adjust the amount of the fees specified in subdivision
17 (b), as necessary, to fully recover, but not exceed, all reasonable administrative
18 and implementation costs of the department and the commission relating to those
19 licenses.

20 **Comment.** Subdivision (a) of Section 14765 continues the first sentences of former Fish and
21 Game Code Section 7881(b) and (c) without substantive change.

22 Subdivision (b) continues former Fish and Game Code Section 7881(f) without substantive
23 change.

24 Subdivision (c) continues former Fish and Game Code Section 7881(g) without substantive
25 change.

26 **§ 14770. Refund of fee based on death**

27 14770. (a) The department may refund the fee paid for a commercial boat
28 registration to the estate of the deceased holder of the registration, if proof is
29 provided by the estate that the death of the holder occurred prior to the opening of
30 the season for which the registration was valid.

31 (b) The department may deduct from the refund an amount equal to the cost of
32 issuing the refund, not to exceed twenty-five dollars (\$25).

33 **Comment.** Section 14770 continues the part of former Fish and Game Code Section 7852.1
34 applicable to commercial boat registrations without substantive change.

35 **§ 14775. Posting of registration on vessel**

36 14775. A commercial boat registration shall be carried aboard the vessel at all
37 times, and shall be posted in a conspicuous place.

38 **Comment.** Section 14775 continues the second sentences of former Fish and Game Code
39 Section 7881(b) and (c) without substantive change.

1 **§ 14780. Issuance of registration number**

2 14780. A person issued a commercial boat registration shall also be issued a
3 registration number.

4 **Comment.** Section 14780 continues a part of former Fish and Game Code Section 7881(a)
5 without substantive change.

6 **§ 14785. Display of registration number**

7 14785. (a) A person who owns or operates a vessel used in connection with
8 fishing operations for profit who has been issued a commercial boat registration
9 pursuant to this article shall display, for the purpose of identification, registration
10 number on the vessel in a manner designated by the department shall display on
11 the vessel, for the purpose of identification, the vessel's registration number, in a
12 manner specified by the department.

13 (b) The method of displaying the registration number on the vessel shall be
14 determined by the department after consultation with the Department of Boating
15 and Waterways, taking into consideration the responsibilities and duties of the
16 Department of Boating and Waterways as prescribed in the Harbors and
17 Navigation Code.

18 (c) The registration number is not transferable, and shall be a permanent fixture
19 on the vessel for which it is issued.

20 **Comment.** Section 14785 continues former Fish and Game Code Section 7880 without
21 substantive change.

22 **§ 14790. Report of lost, destroyed, or sold vessel**

23 14790. If a registered vessel is lost, destroyed, or sold, the owner of the vessel
24 shall immediately report the loss, destruction, or sale to the department.

25 **Comment.** Section 14790 continues former Fish and Game Code Section 7881(d) without
26 change.

27 Article 2. Obligations and Prohibitions

28 **§ 14850. Change of address**

29 14850. A person who moves or acquires a new address after being issued a
30 commercial boat registration or other entitlement authorizing the use of a vessel
31 shall notify the department of the old and new addresses within three months of
32 moving or acquiring the new address.

33 **Comment.** Section 14850 continues the part of former Fish and Game Code Section 7857(m)
34 applicable to commercial boat registrations and related entitlements without substantive change.

35 **§ 14855. Additional application requirement for permit or other entitlement**

36 14855. A person who applies for a commercial fishing vessel permit or other
37 entitlement authorizing the use of a vessel for commercial fishing other than a
38 commercial boat registration shall also hold a valid commercial boat registration

for that vessel issued pursuant to Section 14755 that has not been suspended or revoked.

Comment. Section 14855 continues former Fish and Game Code Section 7857(l) without substantive change.

§ 14860. Required insurance

14860. An owner of a vessel on which a person who is at least 16 but less than 18 years of age, and required to be licensed under Section 14550, is working, shall obtain, and maintain in full force and effect at all times that a person is working on or about the vessel, a policy of insurance that provides indemnification for accident or injury to that person.

Comment. Section 14860 restates former Fish and Game Code Section 7852.4 without substantive change.

Note. Proposed Section 14860 is intended to restate existing Fish and Game Code Section 7852.4 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“The owner of a vessel upon which a person who is at least 16, but less than 18, years of age, and who is licensed under Section 7852 is working shall obtain, and maintain in full force and effect at all times that a person is working on or about the vessel, a policy of insurance that provides indemnification to the person licensed under Section 7852 in case of accident or injury while working on or about the vessel.”

The Commission invites comment on whether this restatement of existing Fish and Game Code Section 7852.4 would substantively change the intended meaning of the existing provision.

§ 14865. Prohibition against multiple entitlements of same type

14865. Not more than one commercial boat registration, commercial vessel fishing license, or any other entitlement of a single type shall be issued for a single vessel.

Comment. Section 14865 continues the part of former Fish and Game Code Section 7857(e) applicable to commercial fishing vessels without substantive change.

Note. Existing Fish and Game Code Section 7857(e) (which would be continued by proposed Section 14865) does not expressly reference a commercial boat registration, although the policy underlying the section appears to apply. Proposed Section 14865 would revise Section 7857(e) to add that reference.

The Commission invites comment on the appropriateness of that revision.

§ 14870. Preparation of fish on commercial fishing vessel for human consumption

14870. Notwithstanding any other provision of this code governing commercial fishing, except as provided in Section 14875, Section 14880, or when prohibited by federal law, fish may be prepared for human consumption aboard a commercial fishing vessel only under the following conditions:

(a) The fish was taken in compliance with all existing commercial fishing laws and regulations and is of a species and size that can be lawfully taken under sportfishing regulations in the area where taken.

(b) The fish was taken incidental to normal commercial fishing operations.

(c) The fish is kept separated from other fish, and stored with other foodstuff for consumption by the crew and passengers aboard the vessel.

(d) The fish is not bought, sold, offered for sale, transferred to another person, landed, brought ashore, or used for a purpose other than consumption by the crew and passengers.

(e) The fish is maintained in a condition that its species can be determined, and if a size or weight limitation applies, its size or weight can be determined, until the fish is prepared for immediate consumption.

(f) If the fish is filleted, a patch of skin is retained on each fillet as prescribed by the commission in its sportfishing regulations, until the fish is prepared for immediate consumption.

(g) Fillets from fish possessed under sportfishing regulations shall be of the minimum length prescribed by commission sportfishing regulations.

(h) The quantity of fish prepared shall not exceed the aggregate sportfishing bag limit for that fish applicable to the total number of crew members and passengers on board the vessel.

Comment. Subdivisions (a) through (g) of Section 14870 continue former Fish and Game Code Section 7856(a)-(d) without substantive change.

Subdivision (h) restates former Fish and Game Code Section 7856(e) without substantive change.

Note. Proposed Section 14870(h) is intended to restate existing Fish and Game Code Section 7856(e) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“A fish that may be possessed under sportfishing regulations shall not be possessed in excess of the sport bag limit for each crew member and passenger on board the vessel.”

The Commission invites comment on whether this restatement of existing Fish and Game Code Section 7856(e) would substantively change the intended meaning of the existing provision.

§ 14875. Possession of specified fish on board commercial fishing vessel

14875. (a) Notwithstanding Section 14870, kelp bass, sand bass, spotted bass, yellowfin croaker, spotfin croaker, California corbina, and marlin, shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip.

(b) Lobster, salmon, or abalone shall not be possessed aboard a commercial fishing vessel while that vessel is on a commercial fishing trip for preparation for human consumption pursuant to this section unless that lobster, salmon, or abalone is taken and possessed in compliance with all applicable laws pertaining to commercial fishing methods of take, licenses, permits, and size limits.

(c) Sturgeon or striped bass shall not be possessed aboard a commercial fishing vessel.

Comment. Section 14875 continues the first three sentences of former Fish and Game Code Section 7856(f) without substantive change.

1 **§ 14880. Take or possession pursuant to sportfishing license**

2 14880. No person shall take or possess any fish pursuant to a sportfishing
3 license while on a commercial fishing vessel engaged in a commercial fishing
4 activity, including going to or from an area where fish are taken for a commercial
5 purpose.

6 **Comment.** Section 14880 continues the fourth sentence of former Fish and Game Code
7 Section 7856(f) without substantive change.

8 Article 3. Suspension of Registration

9 **§ 14950. Specified multiple convictions**

10 14950. (a) In addition to any other applicable penalty, a commercial boat
11 registration may be revoked or suspended by the commission, when requested by
12 the department, for a period not to exceed one year, upon the second conviction in
13 three years of the registrant, or the registrant's agent, servant, employee, or any
14 other person acting under the registrant's direction or control, for a violation of
15 any of the following provisions or regulations adopted pursuant thereto:

16 (1) Title 6 (commencing with Section 19200) of Part 6 of Division 6.

17 (2) Chapter 2 (commencing with Section 38550) of Title 2 of Part 4 of Division
18 10.

19 (3) Title 2 (commencing with Section 38950) of Part 6 of Division 10.

20 (4) Section 39305.

21 (5) Section 39555.

22 (6) Section 39655.

23 (7) Section 39755.

24 (8) Title 2 (commencing with Section 39850) of Part 12 of Division 10.

25 (9) Title 2 (commencing with Section 40300) of Part 13 of Division 10.

26 (10) Title 2 (commencing with Section 40750) of Part 15 of Division 10.

27 (11) Section 40905.

28 (12) Chapter 3 (commencing with Section 41450) of Title 2 of Part 17 of
29 Division 10.

30 (13) Section 42110.

31 (14) Section 42205.

32 (15) Chapter 1 (commencing with Section 42250) of Title 2 of Part 18 of
33 Division 10.

34 (16) Section 42355.

35 (17) Chapter 3 (commencing with Section 42800) of Title 2 of Part 20 of
36 Division 10.

37 (18) Section 42905.

38 (19) Section 43355.

39 (20) Section 43555.

40 (21) Section 43655.

41 (22) Section 44205.

(23) Title 2 (commencing with Section 44400) of Part 25 of Division 10.
 (24) Title 2 (commencing with Section 44750) of Part 26 of Division 10.
 (25) Section 45800.
 (26) Section 45805.
 (27) Title 2 (commencing with Section 46800) of Part 6 of Division 11.
 (28) Section 49010.
 (29) Title 2 (commencing with Section 49450) of Part 9 of Division 11.
 (30) Section 51010.
 (31) Section 51015.
 (32) Article 3 (commencing with Section 51100) of Chapter 2 of Title 2 of Part 15 of Division 11.
 (33) Chapter 2 (commencing with Section 51400) of Title 2 of Part 16 of Division 11.
 (b) The commercial boat registration shall not be revoked unless both the first and second convictions are related to the boat for which the commercial boat registration is to be revoked, and are for violations which occurred when the person convicted was the registrant or the registrant's agent, servant, employee, or acting under the registrant's direction or control.
Comment. Section 14950 restates former Fish and Game Code Section 12002.6 without change.

Note. Proposed Section 14950(a) is intended to restate existing Fish and Game Code Section 12002.6(a) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows, with the restated language italicized:

“Notwithstanding *Sections 12000, 12001, and 12002*, a commercial boat registration may be revoked or suspended by the commission.... for a violation of any of the following provisions or regulations adopted pursuant thereto:

- (1) *Section 5521 or 5521.5.*
- (2) *Article 2 (commencing with Section 8150), Article 3 (commencing with Section 8180), Article 4 (commencing with Section 8210), Article 5 (commencing with Section 8250), Article 6 (commencing with Section 8275), Article 9 (commencing with Section 8370), Article 13 (commencing with Section 8495), and Article 15 (commencing with Section 8550) of Chapter 2 of Part 3 of Division 6.*
- (3) *Article 1 (commencing with Section 8601), Article 2 (commencing with Section 8620), Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8685), Article 6 (commencing with Section 8720), Article 7 (commencing with Section 8750), Article 8 (commencing with Section 8780), and Article 10 (commencing with Section 8830) of Chapter 3 of Part 3 of Division 6.*
- (4) *Article 1 (commencing with Section 9000) of Chapter 4 of Part 3 of Division 6.”*

The Commission invites comment on whether the restatement of the italicized language above, in proposed Section 14950, would cause any substantive change in the meaning of the provision.

Article 4. Fuel Conservation Assistance Program

§ 15000. Purpose of program

15000. The California Energy Extension Service of the Office of Planning and

1 Research shall implement a revolving loan fund program to assist low-income
2 fishing fleet operators reduce their energy costs and conserve fuel by providing
3 low-interest loans to those operators.

4 **Comment.** Section 15000 continues former Fish and Game Code Section 9100 without
5 change.

6 **§ 15005. Report to Legislature**

7 15005. Commencing January 1, 1994, and thereafter biennially, the California
8 Energy Extension Service of the Office of Planning and Research shall report to
9 the Legislature on the status of the loan program, including the number and the
10 amounts of loans made, the amount of loans repaid, and a comparison of the ethnic
11 background of the loan recipients with the ethnic background of the low-income
12 fishing fleet operators.

13 **Comment.** Section 15005 continues former Fish and Game Code Section 9101 without
14 change.

15 CHAPTER 3. AIRCRAFT

16 **§ 15050. Required registration**

17 15050. A person who owns or operates an aircraft used in connection with
18 commercial fishing operations in this state shall obtain a commercial aircraft
19 registration for that aircraft from the department.

20 **Comment.** Section 15050 continues the first sentence of former Fish and Game Code Section
21 7892 without substantive change.

22 **§ 15055. Requirement that registration be carried onboard**

23 15055. A commercial aircraft registration issued pursuant to Section 15050 shall
24 be carried aboard the aircraft at all times when the aircraft is used in connection
25 with commercial fishing operations.

26 **Comment.** Section 15055 continues the second sentence of former Fish and Game Code
27 Section 7892 without substantive change.

28 **§ 15060. Fee for registration**

29 15060. The fee for a commercial aircraft registration shall be two hundred
30 dollars (\$200).

31 **Comment.** Section 15060 continues the third sentence of former Fish and Game Code Section
32 7892 without change.

33 **Note.** Unlike many license fee provisions in the existing Fish and Game Code, the fee
34 provision in existing Section 7892 does not expressly provide for annual adjustment pursuant to
35 existing Section 713.

36 **Is this adjustment nevertheless understood to be applicable to this fee?**

CHAPTER 4. GEOGRAPHIC RESTRICTIONS

Article 1. Take

§ 15100. Take in Tomales Bay

15100. (a) It is unlawful to take fish for a commercial purpose in that portion of Tomales Bay in District 2590 between a line drawn from the most northern tip of Tomales Point northeast, 47° magnetic, to the opposite shore in the vicinity of Dillon Beach, and a line drawn west from the western tip of Tom's Point, 252° magnetic, to the opposite eastern shore of Tomales Point.

(b) This section does not apply to the taking of oysters by persons licensed under **Article 4 (commencing with Section 6480), Chapter 5, Part 1, Division 6**, from their allotted areas.

Comment. Section 15100 restates former Fish and Game Code Section 8398 without substantive change.

Note. The statutory article referenced in the second paragraph of existing Fish and Game Code Section 8398 (which would be continued by proposed Section 15100(b)) was repealed in 1971, and was not unambiguously continued elsewhere in the code. See 1971 Cal. Stat. ch. 347. The cultivation of oysters is now more generally regulated under the aquaculture provisions of the existing code, and pursuant to oyster leases. See existing Fish and Game Code Sections 15406.5, 15406.7.

The Commission invites comment on how to properly continue this aspect of existing Section 8398.

§ 15105. Take only in baitfish traps

15105. (a) California killifish (*Fundulus parvipinnis*), mudsuckers (*Gillichthys mirabilis*), and yellowfin gobies (*Acanthogobius flavimanus*) may only be taken for a commercial purpose with baitfish traps in the tidewaters of Districts 2545, 2550, 2555, 2565, 2610, 2615, and 2650, in the tidewaters of District 2590 south of the City and County of San Francisco, in the Salton Sea, and in Imperial and Riverside Counties.

(b) Shiner perch (*Cymatogaster aggregata*), staghorn sculpin (*Leptocottus armatus*), mudsuckers (*Gillichthys mirabilis*), and yellowfin gobies (*Acanthogobius flavimanus*) may only be taken for a commercial purpose with baitfish traps in Districts 2595, 2600, and 2605, and in the tidewaters of Districts 2525 and 2535.

(c) Any unauthorized species taken incidentally in a baitfish trap in a district listed in subdivision (a) or (b) shall be immediately released.

(d) Baitfish traps, as described in Section 19610, may be used subject to Title 6 (commencing with Section 19200) of Part 6 of Division 6.

Comment. Section 15105 continues former Fish and Game Code Section 8400 without substantive change.

Note. Proposed Section 15100(d) is intended to restate existing Fish and Game Code Section 8400(d) without changing its substantive effect. Section 8400(d) reads as follows:

1 “Baitfish traps, as described in Section 9020, may be used subject to Article 1 (commencing
2 with Section 9000) of Chapter 4.”

3 **The Commission invites comment on whether restatement of Section 8400(d) would**
4 **substantively change its intended meaning.**

5 Article 2. Sale or Purchase

6 § 15150. Sale or purchase of fish in District 2670 or Smith River

7 15150. (a) It is unlawful to sell or purchase any fresh, canned, or cured fish
8 taken in District 2670, or in the waters of the Smith River.

9 (b) Nothing in this article applies to trout grown pursuant to Part 1 (commencing
10 with Section 23300) of Division 7.

11 **Comment.** Subdivision (a) of Section 15150 continues former Fish and Game Code Section
12 8434 without substantive change.

13 Subdivision (b) continues the part of former Fish and Game Code Section 8433 applicable to
14 former Fish and Game Code Section 8434 without change.

15 Article 3. Out-of-State Delivery of Fish

16 § 15200. Permit to deliver fish out of state

17 15200. The law relating to the subject of control of fishing in state waters when
18 delivery is to points beyond state waters was adopted as an initiative measure at
19 the General Election of November 8, 1938. The reference to Section 845 in the last
20 sentence is to Sections 15400, 15405, 15420, subdivision (b) of Section 15425,
21 Sections 19405, 19410, 19425, and subdivision (b) of Section 19430. The
22 initiative measure reads as follows:

23 1110—No person shall use or operate or assist in using or operating in this State
24 or the waters thereof, any boat or vessel used in connection with fishing
25 operations, irrespective of its home port or port of registration, which delivers or
26 by which there is delivered to any place other than within this State any fish,
27 mollusks or crustaceans which are caught in, or taken aboard said boat or vessel
28 from, the waters of the Pacific Ocean within this State, or on the high seas, or
29 elsewhere, unless a permit authorizing the same shall have been issued by the Fish
30 and Game Commission.

31 Where it appears to the commission that such permit will not tend to prevent,
32 impede or obstruct the operation, enforcement, or administration of this code or
33 any provision thereof, and will not tend to result in fish, mollusks or crustaceans in
34 the waters of this State being taken or used otherwise than is authorized by this
35 code, the commission may issue revocable permits under such rules and
36 regulations and upon such terms and conditions as it may prescribe to deliver fish,
37 mollusks or crustaceans by the use of such boat or vessel outside of this State,
38 provided that nothing herein shall authorize the transportation or carrying out of
39 this State or any district thereof, of any fish, mollusks or crustaceans where the

1 same is prohibited by law, and no permit shall be issued which may tend to deplete
2 any species of fish, mollusk or crustacean, or result in waste thereof. Any person
3 who uses or operates or assists in using or operating any boat or vessel in violation
4 of the provisions of this section is guilty of a misdemeanor and such boat or vessel
5 and the net, gear or other equipment of said boat or vessel is a public nuisance and
6 shall be forfeited. It is the duty of every person authorized to make an arrest for
7 the violation of any of the provisions of this code, to seize and keep such boat,
8 vessel, net, gear or other equipment and to report such seizure to the commission.
9 The commission shall thereupon commence, in the superior court of the county or
10 city and county in which or nearest to which the seizure is made, proceedings for
11 forfeiture of the seized property for its use in violation of this section, and such
12 proceeding shall be had in the manner and according to the procedure provided by
13 Section 845 of this code for the forfeiture of nets.

14 **Comment.** Section 15200 combines and continues former Fish and Game Code Sections 1110
15 and 7891 without substantive change.

16 TITLE 3. NETS GENERALLY

17 CHAPTER 1. GENERAL PROVISIONS

18 § 15300. Length of meshes

19 15300. The length of the meshes of a net shall be determined by taking at least
20 four meshes and measuring them inside the knots or, in the case of knotless nets,
21 inside the points at which the meshes are joined while they are simultaneously
22 drawn closely together.

23 **Comment.** Section 15300 continues former Fish and Game Code Section 8602 without
24 substantive change.

25 § 15305. Use near pier, wharf, jetty, breakwater, or dock

26 15305. Notwithstanding Sections 15500, 15510, 15915, and 18210, the
27 commission may, after a public hearing, when it determines that it is in the best
28 interests of the state's marine resources and fisheries, adopt regulations,
29 authorizing the use of nets not less than 75 feet from any private pier, wharf, jetty,
30 breakwater, or dock, and restricting the use of the nets within 750 feet of any
31 public pier. However, nothing in this section authorizes the commission to adopt
32 regulations which would extend beyond the maximum of 750 feet the area in
33 which the use of nets is prohibited, as specified in Sections 15500, 15510, 15915,
34 and 18210, or which would prohibit the use of any nets within 75 feet of any
35 private pier, wharf, jetty, breakwater, or dock if that use of the net is permitted by
36 law.

37 **Comment.** Section 15305 continues former Fish and Game Code Section 8608 without
38 substantive change.

CHAPTER 2. NUISANCE

§ 15400. Seizure

15400. (a) A net used for taking fish in violation of this code is a public nuisance. It is the duty of every person authorized to make an arrest for a violation of this code governing the use of nets to take fish to seize and keep the net, and report the seizure to the department.

(b) In lieu of a physical seizure of a net pursuant to subdivision (a), a person authorized to make an arrest for a violation of any provision of this code may attach to a net used for taking fish in violation of this code a tag of metal or other material, which shall be furnished by the department for that purpose. The tag shall be impressed or printed with language stating that the net to which it is attached has been seized by the department as a public nuisance.

(c) Attaching a tag pursuant to subdivision (b) shall be a seizure within the meaning of this section.

(d) The following acts are misdemeanors:

(1) Removal of a tag attached pursuant to subdivision (b), unless authorized by the department.

(2) Using a net tagged pursuant to subdivision (b) for fishing purposes, unless authorized by the department or by the superior court.

Comment. Subdivision (a) of Section 15400 continues the part of the first paragraph of former Fish and Game Code Section 8630 applicable to nets without substantive change. See also Section 19405 (seizure of trap as public nuisance).

Subdivisions (b)-(d) continue former Fish and Game Code Section 8631 without substantive change.

§ 15405. Removal of seized net from vessel

15405. Within three days after the department has been notified in writing that a vessel carrying a seized net has arrived in port, the department may remove the net from the vessel, unless the owner has filed a bond in accordance with Section 15410. The notice shall be sufficient when delivered to the office of the department nearest to the port at which the vessel has arrived.

Comment. Section 15405 continues former Fish and Game Code Section 8632 without substantive change.

Note. The intended meaning of the second sentence of existing Section 8632, indicating that notice to the department of the arrival of a vessel carrying a seized net “is sufficient” when delivered to the nearest department office, is unclear. Is this sentence intended to *require* that the notice be delivered to that office, or merely identify that delivery as one way in which the department may be notified?

The Commission invites comment on the meaning of this sentence.

§ 15410. Bond


15410. (a) When a net is seized pursuant to this article, the owner or any other person otherwise entitled to possession of the net may apply to the superior court

1 of the county or city and county in which the seizure was made, or the county or
2 city and county of which the claimant is a resident, for leave to file a bond and
3 regain possession of the net, during the pendency of any proceeding for forfeiture
4 of the net.

5 (b) The bond shall be in an amount determined by the judge to be the actual
6 value of the net at the time of its release, and shall be conditioned on the transfer
7 of the net to the custody of the department, if the net is later ordered forfeited.

8 (c) The bond shall be filed within three days after the seizure of the net. Upon
9 filing the bond, the person on whose behalf it is given shall be put in possession of
10 the net, and may use the net until it is ordered forfeited by a judgment of the court.

11 **Comment.** Section 15410 continues former Fish and Game Code Section 8633 without
12 substantive change.

13  **Note.** The intended application of the requirement in existing Fish and Game Code Section
14 8633 that the specified bond “shall be filed within three days after the seizure of the net” appears
15 impractical. It seems reasonably possible that the owner of a net that had been left unattended
16 might not even realize the net had been seized until some number of days after the seizure.
17 Moreover, any net owner seeking return of the net must first apply to a court for leave to file a
18 bond, and then wait for the court to approve the application and set the amount on the bond, a
19 process that could alone consume more than three days.

20 **The Commission invites comment on this issue, and whether the stated requirement**
21 **should be revised.**

22 **§ 15415. Exceptions to release of net on bond**

23 15415. Notwithstanding Section 15410, a net seized pursuant to Section 15410
24 as illegal because of its size, manner of construction, materials used in its
25 construction, or configuration of its parts is presumed to be contraband, and shall
26 not be returned pending forfeiture, unless it can be and is modified to eliminate the
27 condition of illegality. This subdivision does not apply to a net seized pursuant to
28 Section 15410 for illegal use.

29 (b) Notwithstanding subdivision (a), any net seized pursuant to Section 15410
30 that is needed for evidence may be held for evidence.

31 **Comment.** Section 15415 continues the part of former Fish and Game Code Section 8635
32 applicable to nets without substantive change.

33 **§ 15420. Petition for forfeiture**

34 15420. (a) The department may commence proceedings in the superior court of
35 the county or city and county in which the seizure is made by petitioning the court
36 for a judgment forfeiting the net.

37 (b) Upon the filing of the petition, the clerk of the court shall fix a time for a
38 hearing, and cause notices to be posted for 14 days in at least three public places in
39 the place where the court is held, setting forth the substance of the petition and the
40 time and place fixed for its hearing.

41 (c) At that time, the court shall hear and determine the proceeding and, upon
42 proof that the net was used in violation of this code, shall order it forfeited.

1 **Comment.** Section 15420 continues the first three sentences of the second paragraph of former
2 Fish and Game Code Section 8630 without substantive change.

3 **Note.** Existing Section 8630 requires court clerks, following the filing of a petition to forfeit a
4 seized net, to post notice of the petition and the hearing on the petition “in at least three public
5 places in places where the court is held.”

6 **The Commission invites comment on whether this provision should be revised to provide**
7 **more specific direction to court clerks, or better apprise net owners of the commencement**
8 **of a forfeiture proceeding.**

9 **§ 15425. Disposition of net**

10 15425. (a) When a net is seized pursuant to this article and the owner or any
11 other person otherwise entitled to possession of the net has filed a bond and
12 regained possession of the net, the person in possession of the net, if the net is
13 ordered forfeited pursuant to a judgment of the court, shall deliver the net to the
14 department by placing in a warehouse or storage designated by the department.

15 (b) A net that is ordered forfeited shall be sold or destroyed by the department.
16 The proceeds from those sales shall be paid into the Fish and Game Preservation
17 Fund.

18 **Comment.** Subdivision (a) of Section 15425 continues former Fish and Game Code Section
19 8634 without substantive change.

20 Subdivision (b) continues the fourth and fifth sentences of the second paragraph of former Fish
21 and Game Code Section 8630 without substantive change.

22 **CHAPTER 3. SPECIAL RULES FOR IDENTIFIED WATERS**

23 **Comment.** The provisions appearing in this chapter and in Chapter 3 (commencing with
24 Section 17000) of Title 4 together continue the provisions of former Article 4 (commencing with
25 Section 8660) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, which are
26 governed by Section 4(b) of Article X B of the California Constitution.

27 **§ 15500. Districts 2625 and 2630**

28 15500. Nothing in this chapter or in Chapter 3 (commencing with Section
29 17000) of Title 4 authorizing the use of nets in District 2625 or 2630 shall
30 authorize the use of any net within 750 feet of any pier, wharf, jetty, or
31 breakwater, except that dip nets may be used subject to the provisions of Chapter 9
32 (commencing with Section 16400) of Title 4.

33 **Comment.** Section 15500 continues former Fish and Game Code Section 8660.

34 Section 15500 is governed by Section 16865, a section that codifies and implements Section 4
35 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
36 impairment of constitutional requirements, former Section 8660 has been continued without
37 change, except to update cross-references to reflect renumbering required by the enactment of this
38 code.

39 When enacting the bill that added this section, the Legislature did not evaluate the relationship
40 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

41 **§ 15505. Districts 2630 and 2640**

42 15505. Vessels may carry nets across Districts 2630 and 2640 to open water

1 outside those districts. Vessels carrying nets may enter harbors in Districts 2630
2 and 2640 only in cases of distress or emergency.

3 **Comment.** Section 15505 continues former Fish and Game Code Section 8661.

4 Section 15505 is governed by Section 16865, a section that codifies and implements Section 4
5 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
6 impairment of constitutional requirements, former Section 8661 has been continued without
7 change, except to update cross-references to reflect renumbering required by the enactment of this
8 code.

9 When enacting the bill that added this section, the Legislature did not evaluate the relationship
10 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

11 **§ 15510. District 2685**

12 15510. In District 2685, a net may not be used within 750 feet of any pier or
13 dock, except for bait nets described in Section 235 used to capture live bait and
14 lobster traps authorized for use pursuant to Sections 49700, 49705, and 49710.

15 **Comment.** Section 15510 continues former Fish and Game Code Section 8665.

16 Section 15510 is governed by Section 16865, a section that codifies and implements Section 4
17 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
18 impairment of constitutional requirements, former Section 8665 has been continued without
19 change, except to update cross-references to reflect renumbering required by the enactment of this
20 code.

21 When enacting the bill that added this section, the Legislature did not evaluate the relationship
22 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

23 **§ 15515. Area upstream from Antioch area**

24 15515. No gill net, trammel net, or fyke net may be possessed on a boat in the
25 waters of any district lying upstream from a line drawn between Antioch Point and
26 the westerly tip of Kimball Island and from a line drawn from Point Sacramento
27 across the stream and touching the most easterly point on Montezuma Island.

28 **Comment.** Section 15515 continues former Fish and Game Code Section 8663.

29 Section 15515 is governed by Section 16865, a section that codifies and implements Section 4
30 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
31 impairment of constitutional requirements, former Section 8663 has been continued without
32 change.

33 When enacting the bill that added this section, the Legislature did not evaluate the relationship
34 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

35 **§ 15520. Area in or near Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers**

36 15520. Except in Districts 2570 and 2575, any net found in, or within 500 feet of
37 the Klamath, Smith, Eel, Mad, Van Dusen, or Mattole Rivers, or their tributaries,
38 is prima facie evidence that the owner or person in possession of the net is or has
39 been using it unlawfully.

40 The provisions of this section do not apply to trawl or drag nets being
41 transported.

42 **Comment.** Section 15520 continues former Fish and Game Code Section 8664.

43 Section 15520 is governed by Section 16865, a section that codifies and implements Section 4
44 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible

1 impairment of constitutional requirements, former Section 8664 has been continued without
2 change, except to update cross-references to reflect renumbering required by the enactment of this
3 code.

4 When enacting the bill that added this section, the Legislature did not evaluate the relationship
5 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

6 **§ 15525. Take of mullet or carp in Salton Sea and New and Alamo Rivers**

7 15525. No fish other than mullet or carp, and no mullet less than 14 inches in
8 length may be taken or possessed by a licensed commercial fisherman while
9 fishing in the Salton Sea or the New and Alamo Rivers.

10 **Comment.** Section 15525 continues former Fish and Game Code Section 8667.

11 Section 15525 is governed by Section 16865, a section that codifies and implements Section 4
12 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
13 impairment of constitutional requirements, former Section 8667 has been continued without
14 change.

15 When enacting the bill that added this section, the Legislature did not evaluate the relationship
16 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

17 **Note.** Existing Section 8667 (which would be continued by proposed Section 15525) appears
18 in the existing code in an article entitled “Nets Generally in Particular Districts.” As a result,
19 proposed Section 15525 has been located, along with the continuations of the other provisions in
20 that existing article, in a Title entitled “Nets Generally.”

21 However, Section 8667 may apply to take by means other than the use of net, and the
22 placement of proposed Section 15525 in a title referring only to nets could create confusion, or
23 prevent some readers from being aware of the provision.

24 **The Commission invites comment on whether the proposed location of proposed Section**
25 **15525 is problematic.**

26 **§ 15530. Salton Sea and New and Alamo Rivers**

27 15530. No commercial fishing under Section 17025, 15525, or 15535, shall be
28 carried on within the boundaries of any state or federal game refuge.

29 **Comment.** Section 15530 continues former Fish and Game Code Section 8668.

30 Section 15530 is governed by Section 16865, a section that codifies and implements Section 4
31 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
32 impairment of constitutional requirements, former Section 8668 has been continued without
33 change, except to update cross-references to reflect renumbering required by the enactment of this
34 code.

35 When enacting the bill that added this section, the Legislature did not evaluate the relationship
36 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

37 **Note.** Existing Section 8668 (which would be continued by proposed Section 15530) appears
38 in the existing code in an article entitled “Nets Generally in Particular Districts.” As a result,
39 proposed Section 15530 has been located, along with the continuations of the other provisions in
40 that existing article, in a Title entitled “Nets Generally.”

41 However, Section 8668 appears to have a significantly broader application than to the use of
42 nets, and the placement of proposed Section 15530 in a title referring only to nets could create
43 confusion, or prevent some readers from being aware of the provision.

44 **The Commission invites comment on whether the proposed location of proposed Section**
45 **15530 is problematic.**

1 **§ 15535. Possession of certain gear near Salton Sea and New and Alamo Rivers**

2 15535. It is unlawful to possess gill nets, seines, or other devices capable of
3 being used to take mullet or carp for commercial purposes, within 500 yards of the
4 Salton Sea and those portions of the New and Alamo Rivers designated as
5 commercial fishing waters lying in District 2655, except during such open season
6 as may be prescribed by the commission.

7 **Comment.** Section 15535 continues former Fish and Game Code Section 8669.

8 Section 15535 is governed by Section 16865, a section that codifies and implements Section 4
9 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
10 impairment of constitutional requirements, former Section 8669 has been continued without
11 change, except to update cross-references to reflect renumbering required by the enactment of this
12 code.

13 When enacting the bill that added this section, the Legislature did not evaluate the relationship
14 of this section to Section 16865 or Article X B of the California Constitution. See Section 16800.

15 **Note.** Existing Section 8669 (which would be continued by proposed Section 15535) appears
16 in the existing code in an article entitled “Nets Generally in Particular Districts.” As a result,
17 proposed Section 15535 has been located, along with the continuations of the other provisions in
18 that existing article, in a Title entitled “Nets Generally.”

19 However, Section 8669 appears to have a broader application than to the use of nets, and the
20 placement of proposed Section 15535 in a title referring only to nets could create confusion, or
21 prevent some readers from being aware of the provision.

22 **The Commission invites comment on whether the proposed location of proposed Section**
23 **15535 is problematic.**

24 **§ 15540. Waters upstream from Carquinez Bridge**

25 15540. (a) It is unlawful for any person to use, operate, or assist in using or
26 operating any net to take salmon, steelhead, striped bass, sturgeon, or shad for
27 commercial purposes in any of the tidal waters lying upstream from the Carquinez
28 Bridge, or to possess on any boat in these waters any net the use of which is illegal
29 in such waters.

30 (b) The punishment for a first violation of this section is a fine of not more than
31 two thousand dollars (\$2,000), imprisonment in a county jail for not more than one
32 year, or both the fine and imprisonment.

33 (c) A second or subsequent violation of this section is punishable by a fine of
34 not less than two thousand dollars (\$2,000) nor more than four thousand dollars
35 (\$4,000), or imprisonment in a county jail for one year, or both that fine and
36 imprisonment.

37 **Comment.** Subdivision (a) of Section 15540 continues former Fish and Game Code Section
38 8670.

39 Subdivision (a) is governed by Section 16865, a section that codifies and implements Section 4
40 of Article X B of the California Constitution. See Section 16850.1. To avoid any possible
41 impairment of constitutional requirements, former Section 8670 has been continued in the
42 subdivision without change.

43 Subdivision (b) of Section 15540 continues former Fish and Game Code Section 12002(b)(5)
44 without substantive change.

45 Subdivision (c) continues former Fish and Game Code Section 12003 without substantive
46 change.

1 When enacting the bill that added this section, the Legislature did not evaluate the relationship
2 of any provision of this section to Section 16865, or to Article X B of the California Constitution.
3 See Section 16800.

4 CHAPTER 4. SET NETS

5 Article 1. General Provisions

6 § 15600. Markings

7 15600. (a) A set net shall be marked at both ends with buoys displaying above
8 their waterlines, in numerals at least 2 inches high, the commercial fishing license
9 identification number of the owner of the net.

10 (b) Each piece or panel of a set net shall be marked along the corkline of the net,
11 in a manner determined by the department to adequately identify the net, with the
12 commercial fishing license identification number of the owner of the net. The
13 distance between the markings shall not exceed 45 fathoms.

14 **Comment.** Subdivision (a) of Section 15600 continues the part of former Fish and Game Code
15 Section 8601.5(a) applicable to set nets without substantive change.

16 Subdivision (b) continues the first two sentences of former Fish and Game Code Section
17 8601.5(b) without substantive change.

18 **Notes.** (1) Existing Fish and Game Code Sections 8601.5(a) (and (b) both reference “the
19 fisherman’s identification number.” Existing Fish and Game Code Section 9029(c) provides that,
20 for purposes of Section 8601.5, “fisherman’s identification number” means the number of the
21 person’s commercial fishing license issued pursuant to Section 7850.” Proposed Section 15600
22 would incorporate that clarification.

23 (2) Is the “fisherman” in the phrase “fisherman’s identification number” intended to be the
24 commercial fisherman who *owns* the net, or the commercial fisherman *fishing* with the net?
25 Because much of the remainder of Section 8601.5 appears to focus substantially on the
26 responsibility of the owner of the net, the Commission reads these provisions as intended to
27 identify the owner of the net, rather than the user, and proposed Section 15600(a) and (b) would
28 expressly reflect that interpretation.

29 **The Commission invites comment on the appropriateness of this revision.**

30 § 15605. Breaking strength of footrope

31 15605. The footrope (leadline) of any set net shall have a breaking strength of at
32 least 50 pounds less than the combined breaking strength of the headrope and
33 corkline.


34 **Comment.** Section 15605 continues former Fish and Game Code Section 8601.6(a) without
35 substantive change.

36 § 15610. Lost net

37 15610. (a) If a person is unable to recover a set net or portion of a set net, the
38 person shall contact one of the department offices located in the cities of Belmont,
39 Monterey, Los Alamitos, or San Diego, not later than 72 hours after returning to
40 port following the loss, and shall report all of the following information:

41 (1) The date and time when the net was lost.

- 1 (2) The location, including depth, where the net was lost.
- 2 (3) A description of the lost net, including the mesh size, length, height, and
- 3 target species, and whether anchors remain attached to the net.
- 4 (4) The name and commercial fishing license identification number of the owner
- 5 of the net.
- 6 (5) The name and commercial fishing license identification number of the
- 7 person fishing with the net, if different from the owner of the net.
- 8 (6) The name and commercial boat registration number of the vessel from which
- 9 the lost net was being fished.
- 10 (b) If the lost or abandoned net is recovered by the department or persons
- 11 designated by the department, the commission may require the owner of the lost or
- 12 abandoned net to pay for all recovery costs.
- 13 (c) The commission may revoke the owner's set net permit issued pursuant to
- 14 Section 18005 for failure to comply with this subdivision.
- 15 **Comment.** Subdivision (a) of Section 15610 continues former Fish and Game Code Section
- 16 8601.5(c) without substantive change.
- 17 Subdivision (b) continues the third sentence of former Fish and Game Code Section 8601.5(b)
- 18 without change.
- 19 Subdivision (c) continues the fourth sentence of former Fish and Game Code Section 8601.5(b)
- 20 without substantive change.

21  **Note.** Existing Fish and Game Code Section 8601.5(c)(4) and (5) both reference a

22 "fisherman's identification number." Based on a reference in Section 8601.5(c)(6) to what is

23 described as a "California Fish and Game number" of an identified *vessel*, the Commission reads

24 the reference to an identification number in Sections 8601.5(c)(4) and (5) as referring to a

25 commercial fishing license identification number.

26 **The Commission invites comment on whether that interpretation is correct.**

27 CHAPTER 5. ROUND HAUL NETS

28 Article 1. General Provisions [Reserved]

29 Article 2. Special District Rules

30 § 15700. District 2505

31 15700. In District 2505, a round haul net shall not be possessed on a boat.

32 **Comment.** Section 15700 continues the part of former Fish and Game Code Section 8751

33 applicable to former Fish and Game District 1 without substantive change.

34 § 15705. District 2525

35 15705. In District 2525, a round haul net shall not be possessed on a boat, except

36 in the part of the district lying within Marin County.

37 **Comment.** Section 15705 continues the part of former Fish and Game Code Section 8751

38 applicable to former Fish and Game District 2 without substantive change.

1 **§ 15710. District 2540**


2 15710. In District 2540, a round haul net shall not be possessed on a boat, except
3 within the boundaries of Moss Landing Harbor District.

4 **Comment.** Section 15710 continues the part of former Fish and Game Code Section 8751
5 applicable to former Fish and Game District 3 without substantive change.

6 **§ 15715. District 2570**

7 15715. In District 2570, purse nets and round haul nets may be used.

8 **Comment.** Section 15715 continues the part of former Fish and Game Code Section 8752
9 applicable to former Fish and Game District 6 without substantive change.

10  **Note.** It is the Commission's understanding that a purse net is one type of round haul net.
11 **If this is correct, can the separate reference to purse nets in proposed Section 15715 and**
12 **similarly worded provisions that follow be deleted as superfluous?**

13 **§ 15720. District 2575**

14 15720. In District 2575, purse nets and round haul nets may be used.

15 **Comment.** Section 15720 continues the part of former Fish and Game Code Section 8752
16 applicable to former Fish and Game District 7 without substantive change.

17 **§ 15725. District 2580**

18 15725. In District 2580, purse nets and round haul nets may be used.

19 **Comment.** Section 15725 continues the part of former Fish and Game Code Section 8752
20 applicable to former Fish and Game District 8 without substantive change.

21 **§ 15730. District 2585**

22 15730. In District 2585, purse nets and round haul nets may be used.

23 **Comment.** Section 15730 continues the part of former Fish and Game Code Section 8752
24 applicable to former Fish and Game District 9 without substantive change.

25 **§ 15735. District 2590**

26 15735. In District 2590, purse nets and round haul nets may be used.

27 **Comment.** Section 15735 continues the part of former Fish and Game Code Section 8752
28 applicable to former Fish and Game District 10 without substantive change.

29 **§ 15740. District 2595**

30 15740. In District 2595, purse nets and round haul nets may be used.

31 **Comment.** Section 15740 continues the part of former Fish and Game Code Section 8752
32 applicable to former Fish and Game District 11 without substantive change.

33 **§ 15745. District 2610**

34 15745. In District 2610, purse nets and round haul nets may be used.

35 **Comment.** Section 15745 continues the part of former Fish and Game Code Section 8754
36 applicable to former Fish and Game District 16 without change.

1 **§ 15750. District 2615**

2 15750. In District 2615, purse nets and round haul nets may be used.

3 **Comment.** Section 15750 continues the part of former Fish and Game Code Section 8754
4 applicable to former Fish and Game District 17 without change.

5 **§ 15755. District 2620**

6 15755. In District 2620, purse nets and round haul nets may be used.

7 **Comment.** Section 15755 continues the part of former Fish and Game Code Sections 8754
8 applicable to former Fish and Game District 18 without substantive change.

9 **§ 15760. District 2625**

10 15760. (a) In District 2625, purse nets and round haul nets may be used, except
11 as otherwise provided in this section.

12 (b) Purse seines or ring nets may not be used in that portion of the district lying
13 within three miles offshore from the line of the high-water mark along the coast of
14 Orange County from sunrise Saturday to sunset Sunday from May 1 to September
15 10, inclusive.

16 (c) Purse seine or ring nets may not be used from May 1 to September 10,
17 inclusive, in the following portions of the district:

18 (1) Within a two-mile radius of Dana Point.

19 (2) Within a two-mile radius of San Mateo Point.

20 (3) Within two miles offshore from the line of the high-water mark along that
21 portion of the coast of Orange County lying between the northernmost bank of the
22 mouth of the Santa Ana River and a point on that coast six miles south therefrom.

23 (d) Subdivisions (b) and (c) do not apply to the use of a round haul net to take
24 fish for use or sale as live bait. It is unlawful to buy, sell, or possess any dead fish
25 taken under the authority of this subdivision, in any place of business where fish
26 are bought, sold, or processed.

27 (e) A bait net may not be used in the district in violation of Section 15905.

28 **Comment.** Section 15760(a)-(c) continues the part of former Fish and Game Code Section
29 8754 applicable to former Fish and Game District 19 without substantive change.

30 Subdivision (d) continues the part of former Fish and Game Code Section 8757 applicable to
31 former Fish and Game District 19 without substantive change.

32 Subdivision (e) continues the parts of the second sentence of former Fish and Game Code
33 Section 8780(a) applicable to former Fish and Game District 19, without substantive change.

34 **Note.** Proposed Section 15760(a)-(d) is intended to combine and restate the parts of existing
35 Fish and Game Code Sections 8754 and 8757 that apply to existing Fish and Game District 19, to
36 clarify the meaning of those provisions without changing their substantive effect. The existing
37 provisions read as follows:

38 “8754. In Districts 16, 17, 18, and 19, purse and round haul nets may be used, except that purse
39 seines or ring nets may not be used in that portion of District 19 lying within three miles offshore
40 from the line of the high-water mark along the coast of Orange County from sunrise Saturday to
41 sunset Sunday from May 1 to September 10, inclusive.

42 Purse seine or ring nets may not be used from May 1 to September 10, inclusive, in the
43 following portions of District 19:

44 (a) Within a two-mile radius of Dana Point.

(b) Within a two-mile radius of San Mateo Point.
(c) Within two miles offshore from the line of the high-water mark along that portion of the coast of Orange County lying between the northernmost bank of the mouth of the Santa Ana River and a point on that coast six miles south therefrom.”

“8757. Notwithstanding Section 8661, and in addition to Sections 8754, 8755, and 8780, round haul nets may be used to take fish in those portions of Districts 19 and 20 that are closed to the use of round haul nets by Sections 8754 and 8755 and in Districts 19A and 19B, but only for use or sale of those fish for live bait and subject to the following restrictions:

(a) In Districts 19A and 19B, round haul nets may not be used within 750 feet of any public pier.

(b) It is unlawful to buy, sell, or possess in any place of business where fish are bought, sold, or processed, any dead fish taken under the authority of this section.”

The Commission invites comment on whether the combination and restatement of the parts of existing Fish and Game Code Sections 8754 and 8757 applicable to existing Fish and Game District 19 in proposed Section 15760 would substantively change the intended meaning of the existing provisions.

§ 15765. District 2630

15765. In District 2630, notwithstanding Section 15505, a round haul net may be used to take fish for use or sale as live bait, subject to the following restrictions:

(a) The net shall not be used within 750 feet of any public pier.

(b) It is unlawful to buy, sell, or possess any dead fish taken under the authority of this section, in any place of business where fish are bought, sold, or processed.

(c) A bait net may not be used in violation of Section 15905.

Comment. Subdivisions (a) and (b) of Section 15765 continues the part of former Fish and Game Code Section 8757 applicable to former Fish and Game District 19A without substantive change.

Subdivision (c) continues the part of the second sentence of former Fish and Game Code Section 8780(a) applicable to former Fish and Game District 19A without substantive change.

§ 15770. District 2635

15770. In District 2635, a round haul net may be used to take fish for use or sale as live bait, subject to the following restrictions:

(a) The net shall not be used within 750 feet of any public pier.

(b) It is unlawful to buy, sell, or possess any dead fish taken under the authority of this section, in any place of business where fish are bought, sold, or processed.

(c) A bait net may not be used in violation of Section 15905.

Comment. Subdivisions (a) and (b) of Section 15770 continues the part of former Fish and Game Code Section 8757 applicable to former Fish and Game District 19B without substantive change.

Subdivision (c) continues the part of the second sentence of former Fish and Game Code Section 8780(a) applicable to former Fish and Game District 19B without substantive change.

§ 15775. District 2640

15775. (a) In District 2640, purse nets and round haul nets may be used, except at the following times in the following locations:

(1) From sunrise Saturday to sunset Sunday, in the area from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southwesterly and northerly, to a line extending three nautical miles southwest magnetically from the most southerly promontory of China Point.

(2) At any time during the period from June 1 to September 10, in the area from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southerly, to a line extending three nautical miles southeasterly magnetically from the United States government light on the southeasterly end of Santa Catalina Island.

(b) Subdivision (a) shall not be construed as restricting the right to use the waters described in that subdivision for anchorage of vessels at any time.

(c) In addition to subdivision (a), and notwithstanding Section 15505, a round haul net may be used to take fish in the district for use or sale as live bait. It is unlawful to buy, sell, or possess any dead fish taken under the authority of this section, in any place of business where fish are bought, sold, or processed.

(d) Notwithstanding any other provision of this section, a bait net may not be used in the district in violation of Section 15905.

Comment. Subdivisions (a) and (b) of Section 15775 continue the part of former Fish and Game Code Section 8755 applicable to former Fish and Game District 20 without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 8757 applicable to former Fish and Game District 20 without substantive change.

Subdivision (d) continues the part of the second sentence of former Fish and Game Code Section 8780(a) applicable to former Fish and Game District 20 without substantive change.

Note. There appears to be some text missing from existing Fish and Game Code Section 8755. The existing section reads as follows:

“In Districts 20A and 21, purse and round haul nets may be used.

(a) Purse and round haul nets may be used, except: (1) from sunrise Saturday to sunset Sunday, in that portion of District 20 from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southwesterly and northerly to a line extending three nautical miles southwest magnetically from the most southerly promontory of China Point and (2) at any time during the period commencing on June 1st and ending on September 10 in each year, in that portion of District 20 from a line extending three nautical miles east magnetically from the extreme easterly end of Santa Catalina Island southerly to a line extending three nautical miles southeasterly magnetically from the United States government light on the southeasterly end of Santa Catalina Island.

(b) Subdivision (a) shall not be construed as restricting the right to use the waters therein specified for anchorage of vessels at any time.”

Based on the construction of the section, the Commission surmises that the beginning of subdivision (a) of this section was meant to read “(a) Purse and round haul nets may be used *in District 20*, except:...” Proposed Section 15775 is based on this understanding.

The Commission invites comment on whether proposed Section 15775 properly states the intended application of existing Section 8755 to existing Fish and Game District 20.

§ 15780. District 2645

15780. In District 2645, purse nets and round haul nets may be used.

Comment. Section 15780 continues the part of former Fish and Game Code Sections 8755


applicable to former Fish and Game District 20A without substantive change.

§ 15785. District 2650

15785. In District 2650, purse nets and round haul nets may be used.

Comment. Section 15785 continues the part of former Fish and Game Code Sections 8755 applicable to former Fish and Game District 21 without substantive change.

CHAPTER 6. BAIT NETS

 **Note.** It is the staff's understanding that a bait net is a type of round haul net. See existing Fish and Game Code Section 8780(a). The following provisions are drafted accordingly.

§ 15900. Authority of commission

15900. The commission may, upon the recommendation of the department, adopt regulations governing the use of bait nets.

Comment. Section 15900 continues former Fish and Game Code Section 8780.1 without change.

§ 15905. Prohibited use of rings

15905. Except for a drum seine or other round haul net authorized under a permit issued by the department, a bait net may not have rings along the lead line or any method of pursing the bottom of the net.

Comment. Section 15905 continues the second sentence of former Fish and Game Code Section 8780(a) without substantive change.

§ 15910. Districts allowing use of bait nets

15910. (a) A bait net may be used to take fish for bait in Districts 2570, 2575, 2580, 2585, 2590, 2595, 2600, 2605, 2610, 2615, 2620, 2625, 2630, 2635, 2645, 2650, 2680, and 2685.

Comment. Section 15910 continues former Fish and Game Code Section 8780(b) without substantive change.

§ 15915. District 2630

15915. (a) In District 2630, a bait net may be used only to take anchovies, queenfish, white croakers, sardines, mackerel, squid, and smelt, for live bait purposes only. A bait net may not be used within 750 feet of Seal Beach Pier or Belmont Pier.

(b) No other species of fish may be taken on any boat carrying a bait net in District 2630, except that loads or lots of fish may contain not more than 18 percent, by weight of the fish, of other bait fish species taken incidentally to other fishing operations and that are mixed with other fish in the load or lot.

Comment. Section 15915 continues former Fish and Game Code Section 8780(c) and (d) without substantive change.

Note. There exists some ambiguity in existing Fish and Game Code Section 8780 relating to the allowed use of bait nets in existing Fish and Game District 19A. Subdivision (b) of the section, as applicable to District 19A, reads as follows:

“(b) Bait nets may be used to take fish for bait in Districts... 19A.....”

However, subdivision (c) of the same sections reads:

“(c) In District 19A, bait nets may be used only to take anchovies, queenfish, white croakers, sardines, mackerel, squid, and smelt for live bait purposes only. Bait nets may not be used within 750 feet of Seal Beach Pier or Belmont Pier.”

Based on the construction of the section, the Commission reads subdivision (c) as a limitation on subdivision (b), effectively rendering subdivision (b) superfluous as relates to District 19A. Proposed Section 15915 is based on this understanding.

The Commission invites comment on whether proposed Section 15915 properly states the intended application of existing Section 8780 to existing Fish and Game District 19A.

CHAPTER 7. BEACH NETS

Article 1. General Provisions [Reserved]

Article 2. Special District Rules

§ 16000. District 2505

16000. In District 2505, a beach net shall not be possessed on a boat.

Comment. Section 16000 continues the part of former Fish and Game Code Section 8801 applicable to former Fish and Game District 1 without substantive change.

§ 16005. District 2525

16005. In District 2525, a beach net shall not be possessed on a boat.

Comment. Section 16005 continues the part of former Fish and Game Code Section 8801 applicable to former Fish and Game District 2 without substantive change.

§ 16010. District 2540

16010. In District 2540, a beach net shall not be possessed on a boat.

Comment. Section 16010 continues the part of former Fish and Game Code Section 8801 applicable to former Fish and Game District 3 without substantive change.

§ 16015. District 2580

16015. In District 2580, a beach net may be used.

Comment. Section 16015 continues the part of former Fish and Game Code Section 8802 applicable to former Fish and Game District 8 without substantive change.

§ 16020. District 2585

16020. In District 2585, a beach net may be used.

Comment. Section 16020 continues the part of former Fish and Game Code Section 8802 applicable to former Fish and Game District 9 without substantive change.

1 **§ 16025. District 2590**

2 16025. (a) In District 2590, a beach net may be used if its meshes are at least 1
3 1/2 inches in length.

4 (b) In that portion of District 2590 lying south of Point Lobos, a beach net may
5 be used to take surf smelt only if it is over 20 feet in length and has meshes at least
6 seven-eighths of an inch in length.

7 **Comment.** Section 16025 continues former Fish and Game Code Section 8803 without
8 substantive change.

9 **§ 16030. District 2595**

10 16030. In District 2595, a beach net may be used.

11 **Comment.** Section 16030 continues the part of former Fish and Game Code Section 8804
12 applicable to former Fish and Game District 11 without substantive change.

13 **§ 16035. District 2600**

14 16035. In District 2600, a beach net shall not be possessed on a boat.

15 **Comment.** Section 16035 continues the part of former Fish and Game Code Section 8805
16 applicable to former Fish and Game District 12 without substantive change.

17 **§ 16040. District 2605**

18 16040. In District 2605, a beach net shall not be possessed on a boat.

19 **Comment.** Section 16040 continues the part of former Fish and Game Code Section 8805
20 applicable to former Fish and Game District 13 without substantive change.

21 **§ 16045. District 2620**

22 16045. In District 2620, a beach net shall not be used.

23 **Comment.** Section 16045 continues former Fish and Game Code Section 8806 without
24 substantive change.

25 **§ 16050. District 2625**

26 16050. In District 2625, a beach net, the meshes of which are at least 1 1/2
27 inches in length, may be used to take smelt between September 1 and January 31.

28 **Comment.** Section 16050 continues former Fish and Game Code Section 8807 without
29 substantive change.

30 CHAPTER 8. TRAWL NETS

31 Article 1. General Provisions

32 **§ 16100. Legislative declaration**

33 16100. (a) The Legislature finds and declares that the use of nearshore trawl nets
34 was authorized through the experimental gear permit process and the alternative
35 gear development program as a potential alternative to the use of gill and trammel
36 nets in areas where the use of that gear type has been prohibited.

(b) The Legislature, in considering the needs of user groups, requires the use of nearshore trawl nets to be phased out effective January 1, 1993.

Comment. Section 16100 continues former Fish and Game Code Section 8606.1 without change.

Note. The Commission invites comment on whether existing Fish and Game Code Section 8606.1 is obsolete and can be discontinued.

§ 16105. Conformity with federal regulations

16105. (a) Except as otherwise provided in this article, the use of a trawl net shall conform to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

(b) A commercial bottom trawl vessel issued a state permit is subject to the requirements and policies of the federal groundfish observer program (50 C.F.R. 660.360).

Comment. Subdivision (a) of Section 16105 continues the second sentence of former Fish and Game Code Section 8830 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8841(d) without substantive change.

§ 16110. Commission and department authority

16110. (a) The commission is hereby granted authority over all state-managed bottom trawl fisheries not managed under a federal fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.), or a state fishery management plan pursuant to Title 3 (commencing with Section 12100) of Part 4, to ensure that resources are sustainably managed, to protect the health of ecosystems, and to provide for an orderly transition to sustainable gear types in situations where bottom trawling may not be compatible with these goals.

(b) The commission is hereby granted authority to manage all of the following fisheries in a manner that is consistent with this section and Title 3 (commencing with Section 12100) of Part 4:

(1) California halibut.

(2) Sea cucumber.

(3) Ridge-back, spot, and golden prawn.

(4) Pink shrimp.

(c) The commission is also granted authority over other types of gear targeting the same species as the bottom trawl fisheries referenced in subdivision (a) to manage in a manner that is consistent with the requirements of Title 3 (commencing with Section 12100) of Part 4.

(d) The commission may only authorize additional fishing areas for bottom trawls after it determines, based on the best available scientific information, that bottom trawling in those areas is sustainable, does not harm bottom habitat, and does not unreasonably conflict with other users.

(e) The commission shall facilitate the conversion of bottom trawlers to gear that is more sustainable if the commission determines that conversion will not contribute to overcapacity or overfishing. The commission may participate in, and encourage programs that support, conversion to low-impact gear or capacity reduction by trawl fleets. The department may not issue new permits to bottom trawlers to replace those retired through a conversion program.

(f) As soon as practicable, but not later than May 1, 2005, the commission and the department shall submit to the Pacific Fishery Management Council and the National Marine Fisheries Service a request for federal management measures for the pink shrimp fishery that the commission and the department determine are needed to reduce bycatch or protect habitat, to account for uncertainty, or to otherwise ensure consistency with federal groundfish management.

(g) This section does not apply to the use of trawl nets pursuant to a scientific research permit.

Comment. Section 16110 continues former Fish and Game Code Section 8841(a)-(c), (e), and (i)-(k) without substantive change.

Note. The Commission invites comment on whether existing Section 8841(k) (which would be continued by proposed Section 16110(f)) is obsolete.

Article 2. Prohibitions

§ 16150. Mesh size

16150. It is unlawful for a person to use a trawl net with meshes that are less than 4 1/2 inches in length, except as provided in this article or as provided by federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C., Sec. 1801 et seq.).

Comment. Section 16150 continues former Fish and Game Code Section 8831 without substantive change.

§ 16155. Bag or cod-end

16155. It is unlawful to use or possess a trawl net that includes a bag or cod-end, or modification of a bag or cod-end, except a bag or cod-end of a single layer of webbing or as otherwise authorized by Section 40115 or by the commission.

Comment. Section 16155 continues former Fish and Game Code Section 8837 without substantive change.

§ 16160. Prohibited roller gear

16160. (a) It is unlawful to use roller gear more than eight inches in diameter.

(b) This section does not apply to the use of a trawl net pursuant to a scientific research permit.

Comment. Subdivision (a) of Section 16160 continues former Fish and Game Code Section 8841(f) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive change.

1 **Note.** Existing Fish and Game Code Section 8841(f) (which would be continued by proposed
2 Section 16160(a)) is one provision in a much longer section that generally relates to bottom
3 trawling. However, the provision itself provides no context for its prohibition, and on its face
4 could be given broader application than intended.

5 **The Commission invites comment on whether the provision should be revised to prohibit**
6 **use of roller gear in connection with a trawl net.**

7 **§ 16165. Bottom trawling in ocean waters**

8 16165. (a) Except as provided in Sections 40100, 40105, and 40110, or in
9 Sections 40125, 51100, 51105, 51110, and 51115, it is unlawful to engage in
10 bottom trawling in ocean waters of the state.

11 (b) This section does not apply to the use of a trawl net pursuant to a scientific
12 research permit.

13 **Comment.** Subdivision (a) of Section 16165 continues former Fish and Game Code Section
14 8841(h) without substantive change.

15 Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive
16 change.

17 **§ 16170. Required permit for vessel**

18 16170. (a) No vessel may utilize bottom trawling gear without a state or federal
19 permit.

20 (b) This section does not apply to the use of trawl nets pursuant to a scientific
21 research permit.

22 **Comment.** Subdivision (a) of Section 16170 continues former Fish and Game Code Section
23 8841(l) without substantive change.

24 Subdivision (b) continues former Fish and Game Code Section 8841(i) without substantive
25 change.

26 **§ 16175. Chafing gear**

27 16175. (a) Chafing gear may be used or possessed, but shall not be connected
28 directly to the terminal or closed end of the cod-end.

29 (b) Except for chafing gear prescribed under federal groundfish regulations
30 adopted pursuant to the Magnuson Fishery Conservation and Management Act (16
31 U.S.C., Sec. 1801 et seq.), all chafing gear shall have a minimum mesh size of six
32 inches, unless only the bottom one-half, or underside, of the cod-end is covered by
33 chafing gear, which may be of any size mesh.

34 **Comment.** Section 16175 continues former Fish and Game Code Section 8840 without
35 substantive change.

36 **Article 3. Special District Rules**

37 **§ 16250. District 2550**

38 16250. In District 2550, a trawl net or dragnet shall not be possessed, except
39 under regulations that the commission shall adopt.

40 **Comment.** Section 16250 continues the part of former Fish and Game Code Section 8833

applicable to former Fish and Game District 4 without substantive change.

§ 16255. District 2570

16255. In District 2570, a trawl net may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore.

Comment. Section 16255 continues the part of former Fish and Game Code Section 8835 applicable to former Fish and Game District 6 without substantive change.

§ 16260. District 2575

16260. In District 2575, a trawl net may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore.

Comment. Section 16260 continues the part of former Fish and Game Code Section 8835 applicable to former Fish and Game District 7 without substantive change.

§ 16265. District 2590

16265. In District 2590, a trawl net may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore.

Comment. Section 16265 continues the part of former Fish and Game Code Section 8835 applicable to former Fish and Game District 10 without substantive change.

§ 16270. District 2615

16270. In District 2615, a trawl net may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore, including those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within that district.

Comment. Section 16270 continues the part of former Fish and Game Code Section 8836 applicable to former Fish and Game District 17 without substantive change.

§ 16275. District 2620

16275. In District 2620, a trawl net may be used in waters not less than three nautical miles from the nearest point of land on the mainland shore, including those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within that district.

Comment. Section 16275 continues the part of former Fish and Game Code Section 8836 applicable to former Fish and Game District 18 without substantive change.

§ 16280. District 2625

16280. In District 2625, a trawl net or dragnet shall not be possessed, except under regulations that the commission shall adopt.

Comment. Section 16280 continues the part of former Fish and Game Code Section 8833 applicable to former Fish and Game District 19 without substantive change.

1 **§ 16285. District 2630**

2 16285. In District 2630, a trawl net or dragnet shall not be possessed, except
3 under regulations that the commission shall adopt.

4 **Comment.** Section 16285 continues the part of former Fish and Game Code Section 8833
5 applicable to former Fish and Game District 19A without substantive change.

6 **§ 16290. District 2635**

7 16290. In District 2635, a trawl net or dragnet may be possessed under
8 regulations that the commission shall adopt.

9 **Comment.** Section 16290 continues the part of former Fish and Game Code Section 8833
10 applicable to former Fish and Game District 19B without substantive change.

11 **§ 16295. District 2640**

12 16295. In District 2640, a trawl net or dragnet shall not be possessed.

13 **Comment.** Section 16295 continues the part of former Fish and Game Code Section 8833
14 applicable to former Fish and Game District 20 without substantive change.

15 **§ 16300. District 2645**

16 16300. In District 2645, a trawl net or dragnet shall not be possessed.

17 **Comment.** Section 16300 continues the part of former Fish and Game Code Section 8833
18 applicable to former Fish and Game District 20A without substantive change.

19 **§ 16305. District 2650**

20 16305. In District 2650, a trawl net or dragnet shall not be possessed, except
21 under regulations that the commission shall adopt.

22 **Comment.** Section 16305 continues the part of former Fish and Game Code Section 8833
23 applicable to former Fish and Game District 21 without substantive change.

24 **§ 16310. District 2685**

25 16310. In District 2685, a trawl net may be used in waters not less than three
26 nautical miles from the nearest point of land on the mainland shore, including
27 those parts of Monterey Bay, Estero Bay, and San Luis Obispo Bay that lie within
28 that district.

29 **Comment.** Section 16310 continues the part of former Fish and Game Code Section 8836
30 applicable to former Fish and Game District 118.5 without substantive change.

31 Article 4. Special Rules for Identified Waters

32 **§ 16350. Golden Gate Bridge area**

33 16350. A trawl net may be used in marine and brackish waters inside of the
34 Golden Gate Bridge to take shrimp, oriental gobies, longjaw mudsuckers, plainfin
35 midshipmen, and staghorn sculpin, only in accordance with regulations that the
36 commission may adopt.

37 **Comment.** Section 16350 continues the part of former Fish and Game Code Section 8832

applicable to trawl nets without substantive change.

§ 16355. Small cod-end mesh in specified area

16355. It is unlawful to use any trawl net with cod-end mesh less than 7 1/2 inches in length and with a cod end less than 29 meshes long and a circumference of not less than 47 meshes in waters lying between one and three nautical miles from the mainland shore between a line running due west (270° true) from Point Arguello and a line running due south (180° true) from Point Mugu.

Comment. Section 16355 continues former Fish and Game Code Section 8843 without change.

Note. The phrasing of this provision, which makes repeated use of the conjunction “and” (“It is unlawful to use any trawl net with cod-end mesh less than...and with a code end less than...and a circumference...”) is unusual, but would nevertheless normally be understood as requiring *all three* stated conditions to exist for the prohibition of the provision to apply. However, the Fish and Game Commission apparently reads the prohibition as applying when *any* of the three conditions exist. See http://www.co.merced.ca.us/BoardAgenda/2009/MG142477/AS142530/AI142691/DO142804/all_pages.pdf.

The Commission invites comment on which of these two interpretations of existing Section 8843 is intended.

CHAPTER 9. DIP NETS

Article 1. General Provisions

§ 16400. Permitted except where specifically restricted

16400. Except as provided in this chapter, a dip net may be used for commercial fishing in all waters of the state.

Comment. Section 16400 continues part of former Fish and Game Code Section 8870 applicable to general use of dip nets without substantive change.

Article 2. Special District Rules

§ 16450. District 2505

16450. In District 2505, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 16450 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 1 without substantive change.

§ 16455. District 2515

16455. In District 2515, a dip net shall not be baited, and may not measure more than six feet in greatest breadth.

Comment. Section 16455 continues the part of former Fish and Game Code Section 8870(a) applicable to former Fish and Game District 1 1/2 without substantive change.

1 **§ 16460. District 2525**

2 16460. In District 2525, a dip net shall not be baited, and may not measure more
3 than six feet in greatest breadth.

4 **Comment.** Section 16460 continues the part of former Fish and Game Code Section 8870(a)
5 applicable to former Fish and Game District 2 without substantive change.

6 **§ 16465. District 2540**

7 16465. In District 2540, a dip net shall not be baited, and may not measure more
8 than six feet in greatest breadth.

9 **Comment.** Section 16465 continues the part of former Fish and Game Code Section 8870(a)
10 applicable to former Fish and Game District 3 without substantive change.

11 **§ 16470. District 2550**

12 16470. In District 2550, a dip net shall not be baited, and may not measure more
13 than six feet in greatest breadth.

14 **Comment.** Section 16470 continues the part of former Fish and Game Code Section 8870(a)
15 applicable to former Fish and Game District 4 without substantive change.

16 **§ 16475. District 2625**

17 16475. (a) In District 2625, a hand-held dip net 30 feet or less in greatest breadth
18 may be used, except as provided in subdivision (b).

19 (b) A dip net shall not be used in the district within 750 feet of any pier, wharf,
20 jetty, or breakwater, except to take smelt, or to take anchovies, squids, or sardines
21 for bait.

22 **Comment.** Section 16475 continues former Fish and Game Code Section 8870(b) without
23 substantive change.

24 **§ 16480. District 2640**

25 16480. In District 2640, a hand-held dip net 30 feet or less in greatest breadth
26 may be used.

27 **Comment.** Section 16480 continues former Fish and Game Code Section 8870(c) without
28 substantive change.

29 CHAPTER 10. BAITED HOOP NETS

30 Article 1. General Provisions [Reserved]

31 Article 2. Special District Rules

32 **§ 16550. District 2620**

33 16550. A baited hoop net of three foot or less in diameter may be used in that
34 part of District 2620 lying south of a line running east and west through Arguello,
35 to take rock crabs, red crabs, and yellow crabs only.

Comment. Section 16550 continues the part of former Fish and Game Code Section 8890 applicable to former Fish and Game District 18 without substantive change.

§ 16555. District 2625

16555. A baited hoop net of three foot or less in diameter may be used in District 2625 to take rock crabs, red crabs, and yellow crabs only.

Comment. Section 16555 continues the part of former Fish and Game Code Section 8890 applicable to former Fish and Game District 19 without substantive change.

CHAPTER 11. CHINESE SHRIMP NETS

Article 1. General Provisions [Reserved]

Article 2. Special Rules for Identified Waters

§ 16650. Golden Gate Bridge area

16650. A Chinese shrimp net may be used in marine and brackish waters inside of the Golden Gate Bridge to take shrimp, oriental gobies, longjaw mudsuckers, plainfin midshipmen, and staghorn sculpin, only in accordance with regulations that the commission may adopt.

Comment. Section 16650 continues the part of former Fish and Game Code Section 8832 applicable to Chinese shrimp nets without substantive change.

TITLE 4. GILL NETS AND TRAMMEL NETS

Note. The use of gill nets and trammel nets in the state of California is restricted by Article X B of the California Constitution, which was added to the Constitution by initiative on November 6, 1990. Any legislation regulating the use of those nets that conflicts with any provision of Article X B would therefore be invalid and without operative effect. See generally, *People v. Navarro* (1972) 7 Cal. 3d 248, 260, 497 P.2d 481, 102 Cal. Rptr. 137.

Because Article X B constitutes an outer boundary on any new enactment by the Legislature governing the use of gill or trammel nets, the relevant provisions of that article are set forth in full in this Note.

The Commission invites comment on any aspect of any proposed provision in this chapter that appears inconsistent with any provision of the constitutional initiative set forth below.

ARTICLE X B. MARINE RESOURCES PROTECTION ACT OF 1990

SECTION 1. This article shall be known and may be cited as the Marine Resources Protection Act of 1990.

SEC. 2. (a) “District” means a fish and game district as defined in the Fish and Game Code by statute on January 1, 1990.

(b) Except as specifically provided in this article, all references to Fish and Game Code sections, articles, chapters, parts, and divisions are defined as those statutes in effect on January 1, 1990.

(c) “Ocean waters” means the waters of the Pacific Ocean regulated by the State.

(d) “Zone” means the Marine Resources Protection zone established pursuant to this article. The zone consists of the following:

(1) In waters less than 70 fathoms or within one mile, whichever is less, around the Channel Islands consisting of the Islands of San Miguel, Santa Rosa, Santa Cruz, Anacapa, San Nicolaus, Santa Barbara, Santa Catalina, and San Clemente.

(2) The area within three nautical miles offshore of the mainland coast, and the area within three nautical miles off any manmade breakwater, between a line extending due west from Point Arguello and a line extending due west from the Mexican border.

(3) In waters less than 35 fathoms between a line running 180 degrees true from Point Fermin and a line running 270 degrees true from the south jetty of Newport Harbor.

SEC. 3. (a) From January 1, 1991, to December 31, 1993, inclusive, gill nets or trammel nets may only be used in the zone pursuant to a nontransferable permit issued by the Department of Fish and Game pursuant to Section 5.

(b) On and after January 1, 1994, gill nets and trammel nets shall not be used in the zone.

SEC. 4. (a) Notwithstanding any other provision of law, gill nets and trammel nets may not be used to take any species of rockfish.

(b) In ocean waters north of Point Arguello on and after the effective date of this article, the use of gill nets and trammel nets shall be regulated by the provisions of Article 4 (commencing with Section 8660), Article 5 (commencing with Section 8680) and Article 6 (commencing with Section 8720) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, or any regulation or order issued pursuant to these articles, in effect on January 1, 1990, except that as to Sections 8680, 8681, 8681.7, and 8682, and subdivisions (a) through (f), inclusive of Section 8681.5 of the Fish and Game Code, or any regulation or order issued pursuant to these sections, the provisions in effect on January 1, 1989, shall control where not in conflict with other provisions of this article, and shall be applicable to all ocean waters. Notwithstanding the provisions of this section, the Legislature shall not be precluded from imposing more restrictions on the use and/or possession of gill nets or trammel nets. The Director of the Department of Fish and Game shall not authorize the use of gill nets or trammel nets in any area where the use is not permitted even if the director makes specified findings.

SEC. 5. The Department of Fish and Game shall issue a permit to use a gill net or trammel net in the zone for the period specified in subdivision (a) of Section 3 to any applicant who meets both of the following requirements:

(a) Has a commercial fishing license issued pursuant to Sections 7850–7852.3 of the Fish and Game Code.

(b) Has a permit issued pursuant to Section 8681 of the Fish and Game Code and is presently the owner or operator of a vessel equipped with a gill net or trammel net.

SEC. 6. The Department of Fish and Game shall charge the following fees for permits issued pursuant to the following schedule:

Calendar Year	Fee
1991	\$250
1992	500
1993	1,000

SEC. 7. (a) Within 90 days after the effective date of this section, every person who intends to seek the compensation provided in subdivision (b) shall notify the Department of Fish and Game, on forms provided by the department, of that intent. Any person who does not submit the form within that 90-day period shall not be compensated pursuant to subdivision (b). The department shall publish a list of all persons submitting the form within 120 days after the effective date of this section.

(b) After July 1, 1993, and before January 1, 1994, any person who holds a permit issued pursuant to Section 5 and operates in the zone may surrender that permit to the department and agree to permanently discontinue fishing with gill or trammel nets in the zone, for which he or she shall receive, beginning on July 1, 1993, a one time compensation which shall be based upon the average annual ex vessel value of the fish other than any species of rockfish landed by a fisherman, which were taken pursuant to a valid general gill net or trammel net permit issued pursuant to Sections 8681 and 8682 of the Fish and Game Code within the zone during the years 1983 to 1987, inclusive. The department shall verify those landings by reviewing logs and landing receipts submitted to it. Any person who is denied compensation by the department as a result of the department's failure to verify landings may appeal that decision to the Fish and Game Commission.

(c) The State Board of Control shall, prior to the disbursement of any funds, verify the eligibility of each person seeking compensation and the amount of the compensation to be provided in order to ensure compliance with this section.

(d) Unless the Legislature enacts any required enabling legislation to implement this section on or before July 1, 1993, no compensation shall be paid under this article.

SEC. 8. (a) There is hereby created the Marine Resources Protection Account in the Fish and Game Preservation Fund. On and after January 1, 1991, the Department of Fish and Game shall collect any and all fees required by this article. All fees received by the department pursuant to this article shall be deposited in the account and shall be expended or encumbered to compensate persons who surrender permits pursuant to Section 7 or to provide for administration of this article. All funds received by the department during any fiscal year pursuant to this article which are not expended during that fiscal year to compensate persons as set forth in Section 7 or to provide for administration of this article shall be carried over into the following fiscal year and shall be used only for those purposes. All interest accrued from the department's retention of fees received pursuant to this article shall be credited to the account. The accrued interest may only be expended for the purposes authorized by this article. The account shall continue in existence, and the requirement to pay fees under this article shall remain in effect, until the compensation provided in Section 7 has been fully funded or until January 1, 1995, whichever occurs first.

(b) An amount, not to exceed 15 percent of the total annual revenues deposited in the account excluding any interest accrued or any funds carried over from a prior fiscal year may be expended for the administration of this article.

(c) In addition to a valid California sportfishing license issued pursuant to Sections 7149, 7149.1 or 7149.2 of the Fish and Game Code and any applicable sport license stamp issued pursuant to the Fish and Game Code, a person taking fish from ocean waters south of a line extending due west from Point Arguello for sport purposes shall have permanently affixed to that person's sportfishing license a marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3). This subdivision does not apply to any one-day fishing license.

(d) In addition to a valid California commercial passenger fishing boat license required by Section 7920 of the Fish and Game Code, the owner of any boat or vessel who, for profit, permits any person to fish from the boat or vessel in ocean waters south of a line extending due west from Point Arguello, shall obtain and permanently affix to the license a commercial marine resources protection stamp which may be obtained from the department upon payment of a fee of three dollars (\$3).

(e) The department may accept contributions or donations from any person who wishes to donate money to be used for the compensation of commercial gill net and trammel net fishermen who surrender permits under this article.

(f) This section shall become inoperative on January 1, 1995.

SEC. 9. Any funds remaining in the Marine Resources Protection Account in the Fish and Game Preservation Fund on or after January 1, 1995, shall, with the approval of the Fish and Game Commission, be used to provide grants to colleges, universities and other bonafide

scientific research groups to fund marine resource related scientific research within the ecological reserves established by Section 14 of this act.

SEC. 10. On or before December 31 of each year, the Director of Fish and Game shall prepare and submit a report to the Legislature regarding the implementation of this article including an accounting of all funds.

SEC. 11. It is unlawful for any person to take, possess, receive, transport, purchase, sell, barter, or process any fish obtained in violation of this article.

SEC. 12. To increase the State's scientific and biological information on the ocean fisheries of this State, the Department of Fish and Game shall establish a program whereby it can monitor and evaluate the daily landings of fish by commercial fishermen who are permitted under this article to take these fish. The cost of implementing this monitoring program shall be borne by the commercial fishing industry.

SEC. 13. (a) The penalty for a first violation of the provisions of Sections 3 and 4 of this article is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter or process fish for commercial purposes for six months. The penalty for a second or subsequent violation of the provisions of Sections 3 and 4 of this article is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) and a mandatory suspension of any license, permit or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes for one year.

(b) Notwithstanding any other provisions of law, a violation of Section 8 of this article shall be deemed a violation of the provisions of Section 7145 of the Fish and Game Code and the penalty for such violation shall be consistent with the provisions of Section 12002.2 of said code.

(c) If a person convicted of a violation of Section 3, 4, or 8 of this article is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, that the person pay at least the minimum fine prescribed in this section.

SEC. 14. Prior to January 1, 1994, the Fish and Game Commission shall establish four new ecological reserves in ocean waters along the mainland coast. Each ecological reserve shall have a surface area of at least two square miles. The commission shall restrict the use of these ecological reserves to scientific research relating to the management and enhancement of marine resources.

SEC. 15. This article does not preempt or supersede any other closures to protect any other wildlife, including sea otters, whales, and shorebirds.

SEC. 16. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

CHAPTER 1. GENERAL PROVISIONS

§ 16800. Statement of intent

16800. In enacting the bill that added this title, the Legislature did not evaluate the relationship between this title, Chapter 3 (commencing with Section 15500) of Title 3, and Article X B of the California Constitution.

Comment. Section 16800 is new.

1 **§ 16805. Legislative declarations**

2 16805. The Legislature finds and declares that:

3 (a) The central California nearshore gill and trammel net fisheries for California
4 halibut (*Paralichthys californicus*) and white croaker (*Genyonemus lineatus*) and
5 the use of gill nets in these fisheries are expanding at a rapid rate.

6 (b) The incidental take of certain species of seabirds and marine mammals in set
7 gill and trammel nets could be increasing to a level which may be adversely
8 impacting the viability of the populations of nontarget species.

9 **Comment.** Section 16805 continues former Fish and Game Code Section 8609 without
10 change.

11 **CHAPTER 2. MARINE RESOURCES PROTECTION ACT OF 1990**

12 **§ 16850.1. Statement of codification and implementation**

13 16850.1. The Marine Resources Protection Act of 1990 (Art. X B, Cal. Const.)
14 was adopted as an initiative constitutional amendment at the November 6, 1990,
15 general election. This chapter codifies and implements that initiative constitutional
16 amendment.

17 **Comment.** Section 16850.1 continues former Fish and Game Code Section 8610.1 without
18 substantive change.

19 **§ 16850.2. Meaning of references**

20 16850.2. (a) “District” for the purposes of this chapter and of Article X B of the
21 California Constitution means a fish and game district as defined in this code on
22 January 1, 1990.

23 (b) Except as specifically provided in this chapter, all references to sections,
24 articles, chapters, parts, and divisions of this code are to those statutes in effect on
25 January 1, 1990.

26 (c) “Ocean waters” means the waters of the Pacific Ocean regulated by the state.

27 (d) “Zone” means the Marine Resources Protection Zone established pursuant to
28 this chapter. The zone consists of the following:

29 (1) In waters less than 70 fathoms or within one mile, whichever is less, around
30 the Channel Islands consisting of the Islands of San Miguel, Santa Rosa, Santa
31 Cruz, Anacapa, San Nicolaus, Santa Barbara, Santa Catalina, and San Clemente.

32 (2) The area within three nautical miles offshore of the mainland coast, and the
33 area within three nautical miles off any manmade breakwater, between a line
34 extending due west from Point Arguello and a line extending due west from the
35 Mexican border.

36 (3) In waters less than 35 fathoms between a line running 180 degrees true from
37 Point Fermin and a line running 270 degrees true from the south jetty of Newport
38 Harbor.

39 **Comment.** Section 16850.2 continues former Fish and Game Code Section 8610.2.

40 Former Section 8610.2 was enacted to codify and implement Section 2 of Article X B of the
41 California Constitution. See former Section 8610.1 (continued without change in Section

16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.2 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.3. Prohibited use of gill or trammel net to take rockfish

16850.3. (a) From January 1, 1991, to December 31, 1993, inclusive, gill nets or trammel nets may only be used in the zone pursuant to a nontransferable permit issued by the department pursuant to Section 16850.5.

(b) On and after January 1, 1994, gill nets and trammel nets shall not be used in the zone.

Comment. Section 16850.3 continues former Fish and Game Code Section 8610.3.

Former Section 8610.3 was enacted to codify and implement Section 3 of Article X B of the California Constitution. See former Section 8610.1 (continued without change in Section 16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.3 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.4. Authorized use of gill nets and trammel nets

16850.4. (a) Notwithstanding any other provision of law, gill nets and trammel nets may not be used to take any species of rockfish.

(b) In ocean waters north of Point Arguello on and after November 7, 1990, the use of gill nets and trammel nets shall be regulated by the provisions of Chapter 3 (commencing with Section 17000), Chapter 4 (commencing with Section 18000), and Chapter 5 (commencing with Section 18200), of this title, and Chapter 3 (commencing with Section 15500) of Title 3, or any regulation or order issued pursuant to those provisions, in effect on January 1, 1990, except that as to Sections 18000, 18005, 18015, and 18020, and subdivisions (a) to (f), inclusive, of Section 18010, or any regulation or order issued pursuant to these sections, the provisions in effect on January 1, 1989, shall control where not in conflict with other provisions of this chapter, and shall be applicable to all ocean waters. Notwithstanding the provisions of this section, the Legislature shall not be precluded from imposing more restrictions on the use or possession of gill nets or trammel nets. The director shall not authorize the use of gill nets or trammel nets in any area where the use is not permitted even if the director makes specified findings.

Comment. Section 16850.4 continues former Fish and Game Code Section 8610.4.

Former Section 8610.4 was enacted to codify and implement Section 4 of Article X B of the California Constitution. See former Section 8610.1 (continued without change in Section 16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.4 has been continued in this section without change, except to update cross-references to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

1 **§ 16850.5. Permit process during transitional period**

2 16850.5. The department shall issue a permit to use a gill net or trammel net in
3 the zone for the period specified in subdivision (a) of Section 16850.3 to any
4 applicant who meets both of the following requirements:

5 (a) Has a commercial fishing license issued pursuant to Chapter 1 (commencing
6 with Section 14500) of Title 2 of Part 6 of Division 6.

7 (b) Has a permit issued pursuant to Section 18005 and is presently the owner or
8 operator of a vessel equipped with a gill net or trammel net.

9 **Comment.** Section 16850.5 continues former Fish and Game Code Section 8610.5.

10 Former Section 8610.5 was enacted to codify and implement Section 5 of Article X B of the
11 California Constitution. See former Section 8610.1 (continued without change in Section
12 16850.1). To avoid any possible impairment of constitutional requirements, former Section
13 8610.5 has been continued in this section without change, except to update cross-references to
14 reflect renumbering required by the recodification of this code.

15 When enacting the bill that added this section, the Legislature did not evaluate the relationship
16 between this section and Article X B of the California Constitution. See Section 16800.

17 **§ 16850.6. Fees for permit during transitional period**

18 16850.6. The department shall charge the following fees for permits issued
19 pursuant to Section 16850.5 pursuant to the following schedule:

Calendar Year	Fee
1991	\$250
1992	\$500
1993	\$1,000

24 **Comment.** Section 16850.6 continues former Fish and Game Code Section 8610.6.

25 Former Section 8610.6 was enacted to codify and implement Section 6 of Article X B of the
26 California Constitution. See former Section 8610.1 (continued without change in Section
27 16850.1). To avoid any possible impairment of constitutional requirements, former Section
28 8610.6 has been continued in this section without change, except to update a cross-reference to
29 reflect renumbering required by the recodification of this code.

30 When enacting the bill that added this section, the Legislature did not evaluate the relationship
31 between this section and Article X B of the California Constitution. See Section 16800.

32 **§ 16850.9. Use of funds in Marine Resources Protection Account**

33 16850.9. Any funds remaining in the Marine Resources Protection Account in
34 the Fish and Game Preservation Fund on or after January 1, 1995, shall, with the
35 approval of the commission, be used to provide grants to colleges, universities,
36 and other bona fide scientific research groups to fund marine resource related
37 scientific research within the ecological reserves established by Section 16900. An
38 amount, not to exceed 15 percent of the total funds remaining in that account on or
39 after January 1, 1995, may be expended for the administration of this section.

40 **Comment.** Section 16850.9 continues former Fish and Game Code Section 8610.9.

41 Former Section 8610.9 was enacted to codify and implement Section 9 of Article X B of the
42 California Constitution. See former Section 8610.1 (continued without change in Section

16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.9 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.11. Unlawful take

16850.11. It is unlawful for any person to take, possess, receive, transport, purchase, sell, barter, or process any fish obtained in violation of this chapter.

Comment. Section 16850.11 continues former Fish and Game Code Section 8610.11.

Former Section 8610.11 was enacted to codify and implement Section 11 of Article X B of the California Constitution. See former Section 8610.1 (continued without change in Section 16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.11 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.12. Department monitoring of take

16850.12. To increase the state's scientific and biological information on the ocean fisheries of this state, the department shall establish a program whereby it can monitor and evaluate the daily landings of fish by commercial fishermen who are permitted under this chapter to take these fish. The cost of implementing this monitoring program shall be borne by the commercial fishing industry.

Comment. Section 16850.12 continues former Fish and Game Code Section 8610.12.

Former Section 8610.12 was enacted to codify and implement Section 12 of Article X B of the California Constitution. See former Section 8610.1 (continued without change in Section 16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.12 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.13. Penalty

16850.13. (a) The penalty for a first violation of Section 16850.3 or 16850.4 is a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000), and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes, for six months. The penalty for a second or subsequent violation of Section 16850.3 or 16850.4 is a fine of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000), and a mandatory suspension of any license, permit, or stamp to take, receive, transport, purchase, sell, barter, or process fish for commercial purposes, for one year.

(b) If a person convicted of a violation of Section 16850.3 or 16850.4 is granted probation, the court shall impose as a term or condition of probation, in addition to any other term or condition of probation, a requirement that the person pay at least the minimum fine prescribed in this section.

Comment. Section 16850.13 combines and continues former Fish and Game Code Sections

1 8610.13 and 12003.5. References in Section 8610.13 to former Fish and Game Code Section
2 8610.8 have been deleted based on the repeal of that section in 2007. See 2007 Cal. Stat. ch. 263,
3 §22.

4 Former Section 8610.13 was enacted to codify and implement Section 13 of Article X B of the
5 California Constitution. See former Section 8610.1 (continued without change in Section
6 16850.1). Former Section 12003.5 substantially duplicated the provisions of former Section
7 8610.13. To avoid any possible impairment of constitutional requirements, former Section
8 8610.13 has been continued in this section without change, except to update cross-references to
9 reflect renumbering required by the recodification of this code.

10 When enacting the bill that added this section, the Legislature did not evaluate the relationship
11 between this section and Article X B of the California Constitution. See Section 16800.

12 **§ 16850.14. Ecological reserves**

13 16850.14. (a) Prior to January 1, 1994, the commission shall establish four new
14 ecological reserves in ocean waters along the mainland coast. Each ecological
15 reserve shall have a surface area of at least two square miles. The commission
16 shall restrict the use of these ecological reserves to scientific research relating to
17 the management and enhancement of marine resources, including, but not limited
18 to, scientific research as it relates to sportfishing and commercial fishing.

19 Recreational uses, including, but not limited to, hiking, walking, viewing,
20 swimming, diving, surfing, and transient boating are not in conflict with this
21 section.

22 (b) Prior to establishing the four ecological reserves, the commission shall
23 conduct a public hearing at each of the recommended sites or at the nearest
24 practicable location.

25 (c) On and after January 1, 2002, the four ecological reserves established
26 pursuant to subdivision (a) shall be called state marine reserves, unless otherwise
27 reclassified pursuant to **Section 2855**, and shall become part of the state system of
28 marine managed areas.

29 (d) Recreational uses, including, but not limited to, hiking, walking, viewing,
30 swimming, diving, surfing, and transient boating are not in conflict with this
31 section.

32 **Comment.** Section 16850.14 continues former Fish and Game Code Section 8610.14.

33 Former Section 8610.14 was enacted to codify and implement Section 14 of Article X B of the
34 California Constitution. See former Section 8610.1 (continued without change in Section
35 16850.1). To avoid any possible impairment of constitutional requirements, former Section
36 8610.14 has been continued in this section without change, except to update a cross-reference to
37 reflect renumbering required by the recodification of this code.

38 When enacting the bill that added this section, the Legislature did not evaluate the relationship
39 between this section and Article X B of the California Constitution. See Section 16800.

40 **§ 16850.15. Closures to protect wildlife**

41 16850.15. This chapter does not preempt or supersede any other closures to
42 protect any other wildlife, including sea otters, whales, and shorebirds.

43 **Comment.** Section 16850.15 continues former Fish and Game Code Section 8610.15.

44 Former Section 8610.15 was enacted to codify and implement Section 15 of Article X B of the
45 California Constitution. See former Section 8610.1 (continued without change in Section

16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.15 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 16850.16. Severability of provisions of chapter

16850.16. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Comment. Section 16850.16 continues former Fish and Game Code Section 8610.16.

Former Section 8610.16 was enacted to codify and implement Section 16 of Article X B of the California Constitution. See former Section 8610.1 (continued without change in Section 16850.1). To avoid any possible impairment of constitutional requirements, former Section 8610.16 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

CHAPTER 3. USE OF GILL NETS IN PARTICULAR DISTRICTS

Comment. The provisions appearing in this chapter and in Chapter 3 (commencing with Section 15500) of Title 3 together continue the provisions of former Article 4 (commencing with Section 8660) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, which are governed by Section 4(b) of Article X B of the California Constitution.

§ 17000. Additional rules for Districts 2590, 2615 and 2620

17000. (a) Notwithstanding Sections 18085 and 18210, gill nets and trammel nets shall not be used in those portions of District 2615 between a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County and a line extending 252° magnetic from Yankee Point, Carmel Highlands, in Monterey County in waters 30 fathoms or less in depth at mean lower low water.

(b) Notwithstanding Sections 18085 and 18210, gill nets and trammel nets shall not be used in that portion of District 2620 north of a line extending due west from Point Sal in Santa Barbara County in waters 30 fathoms or less in depth at mean lower low water.

(c) Notwithstanding Sections 18085 and 18210, any person using gill nets or trammel nets in those portions of Districts 2615 and 2620 from a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County to a line extending due west from Point Sal in Santa Barbara County in waters between 30 fathoms and 40 fathoms in depth at mean lower low water shall comply with all of the following requirements in order to ensure adequate monitoring of fishing effort to protect marine mammals:

(1) Prior to the use, the person shall notify the department that gill nets or trammel nets will be set in the area.

1 (2) The person shall give adequate notification, as determined by the
2 department, to the department at its office in Monterey or Morro Bay at least 24
3 hours prior to each fishing trip to ensure full compliance and cooperation with the
4 monitoring program. The department may require that an authorized monitor be on
5 board the vessel. The department shall determine whether on board, at sea, or
6 shoreside monitoring is appropriate. If the authorized monitor is not on board the
7 fishing vessel, the fishing vessel operator and the authorized monitor shall make
8 every effort to remain in radio contact if the radio equipment is made available to
9 the monitor.

10 (3) To ensure the effectiveness of the monitoring program, gill nets and trammel
11 nets may be set or pulled only between one-half hour after sunrise and one-half
12 hour before sunset.

13 (4) A permit may be revoked and canceled pursuant to Section 18005 for failure
14 to comply with the department's notification and monitoring requirements.

15 (d) If the director determines that the use of gill or trammel nets is having an
16 adverse impact on any population of any species of seabird, marine mammal, or
17 fish, the director shall issue an order prohibiting or restricting the use, method of
18 use, size, or materials used in the construction of either or both types of those nets
19 in all or any part of District 2590 or 2615, or in all or any part of District 2620
20 north of a line extending due west from Point Conception in Santa Barbara County
21 for a specified period. The order shall take effect no later than 48 hours after its
22 issuance. The director shall hold a properly noticed public hearing in a place
23 convenient to the affected area within one week of the effective date of the order
24 to describe the action taken and shall take testimony as to the effect of the order
25 and determine whether any modification of the order is necessary.

26 (e) For purposes of this section, "adverse impact" means either of the following:

27 (1) The danger of irreparable injury to, or mortality in, any population of any
28 species of seabird, marine mammal, or fish which is occurring at a rate that
29 threatens the viability of the population as a direct result of the use of gill nets or
30 trammel nets.

31 (2) The impairment of the recovery of a species listed as an endangered species
32 or threatened species pursuant to the federal Endangered Species Act (16 U.S.C.
33 Sec. 1531 et seq.) or the California Endangered Species Act (**Chapter 1.5**
34 **(commencing with Section 2050) of Division 3**) or a species of seabird, marine
35 mammal, or fish designated as fully protected under this code, as a direct result of
36 the use of gill nets or trammel nets.

37 (f) This section does not apply to any gill net with meshes 3 1/2 inches or less in
38 length in any portion of District 2590 between Yankee Point in Monterey County
39 and Point Sal in Santa Barbara County.

40 (g) The Legislature finds and declares that this section, which continues former
41 Fish and Game Code Section 8664.5 as amended by Chapter 884 of the Statutes of
42 1990, and as amended by the act that amended former Fish and Game Code
43 Section 8664.5 during the 1992 portion of the 1991–92 Regular Session, is more

1 restrictive on the use and possession of gill nets and trammel nets than the version
2 of former Fish and Game Code Section 8664.5 in effect on January 1, 1990, and
3 therefore complies with former Section 8610.4, and Section 4 of Article X B of
4 the California Constitution.

5 **Comment.** Section 17000 continues former Fish and Game Code Section 8664.5.

6 Section 17000 is governed by Section 16865, a section that codifies and implements Section 4
7 of Article X B of the California Constitution. See Section 16850.1.

8 To avoid any possible impairment of constitutional requirements, former Section 8664.5 has
9 been continued in this section without change, except to update cross-references to reflect
10 renumbering required by the recodification of this code.

11 When enacting the bill that added this section, the Legislature did not evaluate the relationship
12 between this section and Article X B of the California Constitution. See Section 16800.

13 **§ 17005. “Impacted fisherman”**

14 17005. “Impacted fisherman” for purposes of Section 17000 and former Fish
15 and Game Code Section 8664.65, means any person who, from January 1, 1986, to
16 December 31, 1990, inclusive, landed a minimum of 1,000 pounds of fish, other
17 than shark or rockfish, in each of at least three calendar years during that period
18 with set gill and trammel nets and landed the fish at ports within areas subject to
19 gill and trammel net closures pursuant to Section 17000. Landings shall be
20 verified by the fisherman’s submittal of landing receipts as provided in Section
21 21000.

22 **Comment.** Section 17005 continues former Fish and Game Code Section 8664.67.

23 Section 17005 is governed by Section 16865, a section that codifies and implements Section 4
24 of Article X B of the California Constitution. See Section 16850.1.

25 To avoid any possible impairment of constitutional requirements, former Section 8664.67 has
26 been continued in this section without change, except to update cross-references to reflect
27 renumbering required by the recodification of this code.

28 When enacting the bill that added this section, the Legislature did not evaluate the relationship
29 between this section and Article X B of the California Constitution. See Section 16800.

30 **§ 17010. Order by department**

31 17010. The initial period of effectiveness of an order issued pursuant to
32 subdivision (c) of Section 17000 shall not exceed 120 days. After a further public
33 hearing, the director may, on the basis of a report prepared by the department on
34 the condition of the local population of any species of seabird, marine mammal, or
35 fish, extend the order for a further specified period or reissue the order for a
36 further specified period.

37 **Comment.** Section 17010 continues former Fish and Game Code Section 8664.7.

38 Section 17010 is governed by Section 16865, a section that codifies and implements Section 4
39 of Article X B of the California Constitution. See Section 16850.1.

40 To avoid any possible impairment of constitutional requirements, former Section 8664.7 has
41 been continued in this section without change, except to update a cross-reference to reflect
42 renumbering required by the recodification of this code.

43 When enacting the bill that added this section, the Legislature did not evaluate the relationship
44 between this section and Article X B of the California Constitution. See Section 16800.

1 **§ 17015. Additional rules for specified northern California ocean waters**

2 17015. (a) Notwithstanding Sections 18035, 18060, 18095, and 18210, and
3 except as provided in subdivisions (c) and (d), set or drift gill or trammel nets shall
4 not be used in ocean waters between a line extending 245° magnetic from the most
5 westerly point of the west point of the Point Reyes headlands in Marin County and
6 the westerly extension of the California-Oregon boundary.

7 (b)(1) Notwithstanding Sections 17000, 18060, 18095, and 18210, set or drift
8 gill or trammel nets shall not be used in waters which are 40 fathoms or less in
9 depth at mean lower low water between a line extending 245° magnetic from the
10 most westerly point of the west point of the Point Reyes headlands in Marin
11 County and a line extending 225° magnetic from Pillar Point at Half Moon Bay in
12 San Mateo County.

13 (2) Notwithstanding Sections 17000, 18060, 18095, and 18210, set or drift gill
14 or trammel nets shall not be used in ocean waters which are 60 fathoms or less in
15 depth at mean lower low water between a line extending 225° magnetic from
16 Pillar Point at Half Moon Bay in San Mateo County to a line extending 220°
17 magnetic from the mouth of Waddell Creek in Santa Cruz County.

18 (c) Subdivisions (a) and (b) do not apply to the use of drift gill nets operated
19 under a permit issued by the department in that part of Arcata Bay in Humboldt
20 County lying northeast of the Samoa Bridge during the period from April 1 to
21 September 30, inclusive. The department may issue not more than six permits
22 pursuant to this subdivision. Each permit shall specify the amount and type of gear
23 which may be used under the permit.

24 (d) Subdivisions (a) and (b) do not apply to the use of set gill nets used pursuant
25 to Chapter 2 (commencing with Section 40350) of Title 2 of Part 13 of Division
26 10 or regulations adopted pursuant to that chapter or to the use of drift gill nets
27 with a mesh size of 14 inches or more.

28 (e)(1) Notwithstanding subdivision (b) and Sections 18060, 18095, and 18210,
29 gill or trammel nets shall not be used within three nautical miles of the Farallon
30 Islands in San Francisco County, and within three nautical miles of Noonday Rock
31 buoy located approximately 3 1/2 miles 276° magnetic from North Farallon Island.

32 (2) If the director determines that the use of set or drift gill or trammel nets is
33 having an adverse impact on any population of any species of sea bird, marine
34 mammal, or fish, the director shall issue an order prohibiting the use of those nets
35 between three nautical miles and five nautical miles of the Farallon Islands and
36 Noonday Rock buoy or any portion of that area. The order shall take effect not
37 later than 48 hours after its issuance. The director shall hold a properly noticed
38 public hearing in a place convenient to the affected area within one week of the
39 effective date of the order to describe the action taken and shall take testimony as
40 to the effect of the order and determine whether any modification of the order is
41 necessary. Gill and trammel nets used to take fish in District 2590 shall be marked
42 at each end with a buoy displaying above its waterline in Arabic numerals at least
43 two inches high, the fisherman's identification number issued by the department

1 under Section 14550. Nets shall be marked at both ends and at least every 250
2 fathoms between the ends with flags of the same color and at least 144 square
3 inches in size, acceptable to the department.

4 (f) The Legislature finds and declares that this section, which continues former
5 Fish and Game Code Section 8664.8 as amended by Chapter 1633 of the Statutes
6 of 1990, is more restrictive on the use and possession of gill nets and trammel nets
7 than the version of former Fish and Game Code Section 8664.8 in effect on
8 January 1, 1990, and therefore complies with former Section 8610.4, and Section 4
9 of Article X B of the California Constitution.

10 **Comment.** Section 17015 continues former Fish and Game Code Section 8664.8.

11 Section 17015 is governed by Section 16865, a section that codifies and implements Section 4
12 of Article X B of the California Constitution. See Section 16850.1.

13 To avoid any possible impairment of constitutional requirements, former Section 8664.8 has
14 been continued in this section without change, except to update cross-references to reflect
15 renumbering required by the recodification of this code.

16 When enacting the bill that added this section, the Legislature did not evaluate the relationship
17 between this section and Article X B of the California Constitution. See Section 16800.

18 **§ 17020. Ocean area south of Point Conception**

19 17020. During the period from December 15 to May 15, inclusive, set gill nets
20 and trammel nets with mesh eight inches or greater and less than 12 inches used in
21 ocean waters 25 fathoms or less in depth between a line extending due west
22 magnetic from Point Conception and the westerly extension of the boundary line
23 between the Republic of Mexico and the United States shall be constructed with
24 breakaway and anchoring features, as follows:

25 (a) The corkline and any other line which may extend across the top of the net
26 shall have a combined breaking strength not to exceed 2,400 pounds.

27 (b) A breakaway device shall be used along the corkline (headrope) and along
28 the leadline (footrope) at regular intervals of 45 fathoms or less.

29 (c) Each breakaway or disconnect device shall be constructed as described in
30 either of the following:

31 (1) Of nylon twine, or an equivalent material, with a breaking strength of 200
32 pounds or less, using not more than eight complete circular (360) wraps of the
33 twine to connect the ends of each corkline and leadline interval, which allows each
34 breakaway or disconnect device a breaking strength of not more than 1,600
35 pounds.

36 (2) As the department may otherwise authorize.

37 (d) Anchors used to secure each end of the net to the ocean bottom shall weigh
38 not less than 35 pounds each, and shall be attached to the net by a ground rope and
39 bridle with combined length of not less than 15 fathoms from the anchor to the net.

40 **Comment.** Section 17020 continues former Fish and Game Code Section 8664.13.

41 Section 17020 is governed by Section 16865, a section that codifies and implements Section 4
42 of Article X B of the California Constitution. See Section 16850.1.

43 To avoid any possible impairment of constitutional requirements, former Section 8664.13 has
44 been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 17025. Salton Sea and New and Alamo Rivers

17025. The department may issue a revocable permit to take with set gill nets or seines, mullet or carp in the waters of the Salton Sea and in those portions of the New and Alamo Rivers upstream one mile from their mouths as marked by the department, under commercial license, subject to such restrictions as the commission deems advisable.

Comment. Section 17025 continues former Fish and Game Code Section 8666.

Section 17025 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8666 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

CHAPTER 4. GILL AND TRAMMEL NETS

Comment. The provisions appearing in this chapter continue the provisions of former Article 5 (commencing with Section 8680) of Chapter 3 of Part 3 of Division 6 of the Fish and Game Code, which are governed by Section 4(b) of Article X B of the California Constitution.

§ 18000. Legislative declaration

18000. (a) The Legislature finds and declares that it is in the best interest of the people of the state, the commercial fishing industry, and California's marine resources that fishermen who use gill nets or trammel nets be experienced in the use of those nets.

(b) In accordance with Section 4 of Article X B of the California Constitution, this section contains the provisions of former Fish and Game Code Section 8680 in effect on January 1, 1990.

Comment. Section 18000 continues former Fish and Game Code Section 8680.

Section 18000 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8680 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18005. Required permit

18005. (a) Gill nets or trammel nets shall not be used for commercial purposes except under a revocable, nontransferable permit issued by the department. Each permittee shall keep an accurate record of his or her fishing operations in a logbook furnished by the department. The commission may suspend, revoke, or cancel a permit, license, and commercial fishing privileges pursuant to Section 14650. A permit may be revoked and canceled for a period not to exceed one year from the date of revocation.

(b) In accordance with Section 4 of Article X B of the California Constitution, this section contains the provisions of former Fish and Game Code Section 8681 in effect on January 1, 1989.

Comment. Section 18005 continues former Fish and Game Code Section 8681.

Section 18005 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8681 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18010. Grandfathered and transferred permits

18010. (a) The department shall issue no new gill net or trammel net permits under Section 18005. However, the department may renew an existing, valid permit issued under Section 18005, under regulations adopted pursuant to Section 18020 and upon payment of the fee prescribed under Section 18025.

(b) Notwithstanding subdivision (a) or Section 18005, any person who has an existing, valid permit issued pursuant to Section 18005, and presents to the department satisfactory evidence that he or she has taken and landed fish for commercial purposes in at least 15 of the preceding 20 years, may transfer that permit to any person otherwise qualified under the regulations adopted pursuant to Section 18020 upon payment of the fee prescribed under Section 18025.

(c) The fee collected by the department for the transfer of a gill and trammel net permit issued pursuant to Section 18020 shall not exceed the cost of the permit fee as prescribed under Section 18025.

(d) For purposes of subdivision (b), the death of the holder of the permit is a disability which authorizes transfer of the permit by that person's estate to a qualified fisherman pursuant to Section 18020. For purposes of a transfer under this subdivision, the estate shall renew the permit, as specified in Section 18005, if the permittee did not renew the permit before his or her death. The application for transfer by that person's estate shall be received by the department, including the name, address, and telephone number of the qualified fisherman to whom the permit will be transferred, within one year of the date of death of the permit holder. If no transfer is initiated within one year of the date of death of the permit holder, the permit shall revert to the department for disposition pursuant to Section 18005.

(e) Any active participant who becomes disabled in such a manner that he or she can no longer earn a livelihood from commercial fishing may transfer his or her permit as provided under this section.

(f) The Legislature finds and declares that this section, which continues former Section 8681.5 as amended by Chapter 94 of the Statutes of 1992, is more restrictive on the use and possession of gill nets and trammel nets than the version of former Section 8681.5 in effect on January 1, 1989, and therefore complies with former Section 8610.4, and Section 4 of Article X B of the California Constitution.

1 **Comment.** Section 18010 continues former Fish and Game Code Section 8681.5.

2 Section 18010 is governed by Section 16865, a section that codifies and implements Section 4
3 of Article X B of the California Constitution. See Section 16850.1.

4 To avoid any possible impairment of constitutional requirements, former Section 8681.5 has
5 been continued in this section without change, except to update cross-references to reflect
6 renumbering required by the recodification of this code.

7 When enacting the bill that added this section, the Legislature did not evaluate the relationship
8 between this section and Article X B of the California Constitution. See Section 16800.

9 **§ 18015. Appeal of permit denial**

10 18015. (a) Notwithstanding Section 18010, any person who possessed a valid
11 permit issued pursuant to Section 18005 and who was denied renewal of that
12 permit may appeal to the commission where evidence can be presented that illness
13 or the loss of a vessel resulted in the person not meeting the qualifications for
14 renewal or reissuance of that permit.

15 (b) The appeal shall be filed with the commission within 60 days of a denial of
16 the renewal of a permit.

17 (c) If the commission determines that a permit is to be issued to a prior permittee
18 under this section, a permit shall be made available to that person upon payment of
19 required fees.

20 (d) In accordance with Section 4 of Article X B of the California Constitution,
21 this section contains the provisions of former Fish and Game Code Section 8681.7
22 in effect on January 1, 1989.

23 **Comment.** Section 18015 continues former Fish and Game Code Section 8681.7.

24 Section 18015 is governed by Section 16865, a section that codifies and implements Section 4
25 of Article X B of the California Constitution. See Section 16850.1.

26 To avoid any possible impairment of constitutional requirements, former Section 8681.7 has
27 been continued in this section without change, except to update cross-references to reflect
28 renumbering required by the recodification of this code.

29 When enacting the bill that added this section, the Legislature did not evaluate the relationship
30 between this section and Article X B of the California Constitution. See Section 16800.

31 **§ 18020. Regulations**

32 18020. (a) The commission shall establish regulations for the issuance of gill net
33 and trammel net permits as necessary to establish an orderly gill net and trammel
34 net fishery. In promulgating regulations, the commission shall consider
35 recommendations of the gill net and trammel net advisory committee created
36 pursuant to subdivision (b). The regulations shall include, but are not limited to, a
37 requirement that persons being granted a permit have had previous experience as a
38 crewmember of a vessel using gill nets or trammel nets or have successfully
39 passed a proficiency test administered by the department, under such regulations
40 as the commission shall prescribe.

41 (b) The director shall establish an advisory committee, consisting of fishermen
42 experienced in the use of gill nets and trammel nets, to advise the department in
43 developing regulations to be proposed to the commission governing the use of gill
44 nets and trammel nets.

(c) In accordance with Section 4 of Article X B of the California Constitution, this section contains the provisions of former Fish and Game Code Section 8682 in effect on January 1, 1989.

Comment. Section 18020 continues former Fish and Game Code Section 8682.

Section 18020 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8682 has been continued in this section without change.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18025. Permit fee

18025. (a) The fee for a permit issued pursuant to Section 18005 is three hundred thirty dollars (\$330).

Comment. Section 18025 continues former Fish and Game Code Section 8683.

Section 18025 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8683 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18030. Incidental catch of swordfish or marlin

18030. No incidental catch of swordfish or marlin is authorized by this chapter. Any swordfish or marlin caught incidentally by a gill or trammel net permittee operating under a permit issued pursuant to Section 18005 shall be delivered to the department.

A permit issued pursuant to Section 18005 shall be revoked for conviction of a violation of this section.

Comment. Section 18030 continues former Fish and Game Code Section 8684.

Section 18030 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8684 has been continued in this section without change, except to update cross-references to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18035. Districts 2505, 2525, and 2540

18035. In Districts 2505, 2525, and 2540, gill nets and trammel nets may not be possessed on any boat.

Comment. Section 18035 continues former Fish and Game Code Section 8685.

Section 18035 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8685 has been continued in this section without change, except to update cross-references to reflect renumbering required by the recodification of this code.

1 When enacting the bill that added this section, the Legislature did not evaluate the relationship
2 between this section and Article X B of the California Constitution. See Section 16800.

3 **§ 18040. Take of salmon, steelhead, or striped bass**

4 18040. Notwithstanding any other provision of law, gill nets may not be used to
5 take salmon, steelhead, or striped bass.

6 **Comment.** Section 18040 continues former Fish and Game Code Section 8685.5.

7 Section 18040 is governed by Section 16865, a section that codifies and implements Section 4
8 of Article X B of the California Constitution. See Section 16850.1.

9 To avoid any possible impairment of constitutional requirements, former Section 8685.5 has
10 been continued in this section without change.

11 When enacting the bill that added this section, the Legislature did not evaluate the relationship
12 between this section and Article X B of the California Constitution. See Section 16800.

13 **§ 18045. Sale or possession for sale of salmon, steelhead, or striped bass**

14 18045. It is unlawful to sell or possess for sale any salmon, steelhead, or striped
15 bass which were taken in California waters by the use of a gill net.

16 **Comment.** Section 18045 continues former Fish and Game Code Section 8685.6.

17 Section 18045 is governed by Section 16865, a section that codifies and implements Section 4
18 of Article X B of the California Constitution. See Section 16850.1.

19 To avoid any possible impairment of constitutional requirements, former Section 8685.6 has
20 been continued in this section without change.

21 When enacting the bill that added this section, the Legislature did not evaluate the relationship
22 between this section and Article X B of the California Constitution. See Section 16800.

23 **§ 18050. Purchase of salmon, steelhead, or striped bass**

24 18050. It is unlawful for any person to knowingly purchase any salmon,
25 steelhead, or striped bass which were taken in California waters by the use of a gill
26 net.

27 For the purpose of this section, “person” includes a broker who purchases
28 salmon, steelhead, or striped bass which were unlawfully taken by gill net for the
29 purpose of reselling those fish.

30 **Comment.** Section 18050 continues former Fish and Game Code Section 8685.7.

31 Section 18050 is governed by Section 16865, a section that codifies and implements Section 4
32 of Article X B of the California Constitution. See Section 16850.1.

33 To avoid any possible impairment of constitutional requirements, former Section 8685.7 has
34 been continued in this section without change.

35 When enacting the bill that added this section, the Legislature did not evaluate the relationship
36 between this section and Article X B of the California Constitution. See Section 16800.

37 **§ 18055. Districts 2515, 2535, and 2675**

38 18055. In Districts 2515, 2535, and 2675, it is unlawful to possess any gill or
39 trammel net with meshes over 1 3/4 inches in length, except under regulations
40 which may be prescribed by the commission.

41 **Comment.** Section 18055 continues former Fish and Game Code Section 8686.

42 Section 18055 is governed by Section 16865, a section that codifies and implements Section 4
43 of Article X B of the California Constitution. See Section 16850.1.

1 To avoid any possible impairment of constitutional requirements, former Section 8686 has
2 been continued in this section without change, except to update cross-references to reflect
3 renumbering required by the recodification of this code.

4 When enacting the bill that added this section, the Legislature did not evaluate the relationship
5 between this section and Article X B of the California Constitution. See Section 16800.

6 **§ 18060. Districts 2570, 2575, 2580, 2585, and 2590**

7 18060. Except as otherwise provided in this code, drift gill nets may be used in
8 Districts 2570, 2575, 2580, 2585, and 2590.

9 **Comment.** Section 18060 continues former Fish and Game Code Section 8687.

10 Section 18060 is governed by Section 16865, a section that codifies and implements Section 4
11 of Article X B of the California Constitution. See Section 16850.1.

12 To avoid any possible impairment of constitutional requirements, former Section 8687 has
13 been continued in this section without change, except to update cross-references to reflect
14 renumbering required by the recodification of this code.

15 When enacting the bill that added this section, the Legislature did not evaluate the relationship
16 between this section and Article X B of the California Constitution. See Section 16800.

17 **§ 18065. Districts 2595, 2600, and 2605**

18 18065. In Districts 2595, 2600, and 2605, gill nets may be used to take only
19 herring, subject to Chapter 2 (commencing with Section 40350) of Title 2 of Part
20 13 of Division 10. No gill net may be possessed on any boat in Districts 2595,
21 2600, and 2605, except by persons possessing a valid permit aboard boats
22 specifically authorized to take herring during the open seasons established by the
23 commission.

24 **Comment.** Section 18065 continues former Fish and Game Code Section 8688.

25 Section 18065 is governed by Section 16865, a section that codifies and implements Section 4
26 of Article X B of the California Constitution. See Section 16850.1.

27 To avoid any possible impairment of constitutional requirements, former Section 8688 has
28 been continued in this section without change, except to update cross-references to reflect
29 renumbering required by the recodification of this code.

30 When enacting the bill that added this section, the Legislature did not evaluate the relationship
31 between this section and Article X B of the California Constitution. See Section 16800.

32 **§ 18070. Point Reyes ocean area**

33 18070. Set gill nets and trammel nets with mesh smaller than 4 1/8 inches shall
34 not be used or possessed on any boat taking rockfish or lingcod in ocean waters
35 between a line extending 245° magnetic from the most westerly point of the Point
36 Reyes headlands and a line extending 250° magnetic from the Pigeon Point
37 Lighthouse.

38 **Comment.** Section 18070 continues former Fish and Game Code Section 8691.

39 Section 18070 is governed by Section 16865, a section that codifies and implements Section 4
40 of Article X B of the California Constitution. See Section 16850.1.

41 To avoid any possible impairment of constitutional requirements, former Section 8691 has
42 been continued in this section without change.

43 When enacting the bill that added this section, the Legislature did not evaluate the relationship
44 between this section and Article X B of the California Constitution. See Section 16800.

1 **§ 18075. Monterey County ocean area**

2 18075. Notwithstanding Section 18085, it is unlawful to use gill nets to take
3 rockfish or lingcod in the following waters:

4 (a) Between a line running 240° magnetic from Santa Cruz Point and a line
5 running 240° magnetic from Point Sur lighthouse in Monterey County in waters
6 100 fathoms or less in depth.

7 (b) Between a line running 240° magnetic from Point Sur lighthouse and a line
8 running 240° magnetic from Pfeiffer Point in Monterey County in waters 75
9 fathoms or less in depth.

10 **Comment.** Section 18075 continues former Fish and Game Code Section 8692.

11 Section 18075 is governed by Section 16865, a section that codifies and implements Section 4
12 of Article X B of the California Constitution. See Section 16850.1.

13 To avoid any possible impairment of constitutional requirements, former Section 8692 has
14 been continued in this section without change, except to update a cross-reference to reflect
15 renumbering required by the recodification of this code.

16 When enacting the bill that added this section, the Legislature did not evaluate the relationship
17 between this section and Article X B of the California Constitution. See Section 16800.

18 **§ 18080. Permissible net length**

19 18080. (a) Not more than 1,250 fathoms (7,500 feet) of gill net or trammel net
20 shall be fished in combination each day from any vessel for lingcod in ocean
21 waters.

22 (b) The Legislature finds and declares that this section, which continues former
23 Fish and Game Code Section 8692.5 as amended at the 1991–92 Regular Session
24 of the Legislature, is more restrictive on the use and possession of gill nets and
25 trammel nets than the provisions in effect on January 1, 1990, and therefore
26 complies with former Section 8610.4, and Section 4 of Article X B of the
27 California Constitution.

28 **Comment.** Section 18080 continues former Fish and Game Code Section 8692.5.

29 Section 18080 is governed by Section 16865, a section that codifies and implements Section 4
30 of Article X B of the California Constitution. See Section 16850.1.

31 To avoid any possible impairment of constitutional requirements, former Section 8692.5 has
32 been continued in this section without change, except to update a cross-reference to reflect
33 renumbering required by the recodification of this code.

34 When enacting the bill that added this section, the Legislature did not evaluate the relationship
35 between this section and Article X B of the California Constitution. See Section 16800.

36 **§ 18085. Districts 2615, 2620, 2625, and 2645**

37 18085. (a) Except as otherwise provided in this code, drift gill nets and set gill
38 nets may be used in Districts 2615, 2620, 2625, and 2645, except for the taking of
39 salmon.

40 (b) Rockfish and lingcod may be taken with drift gill nets and set gill nets in
41 Districts 2615, 2620, 2625, and 2645, subject to the following restrictions:

42 (1) Rockfish and lingcod shall not be taken between a line running due west
43 magnetic from the lighthouse at Point Piedras Blancas and a line running due west
44 magnetic from Point Sal in water less than 40 fathoms.

(2) Rockfish and lingcod shall not be taken between a line running 250° magnetic from the Pigeon Point Lighthouse and a line running 240° magnetic from Point Santa Cruz, inside 40 fathoms, by means of drift gill nets or set gill nets which have mesh smaller than 5 1/2 inches.

(3) Drift gill nets and set gill nets shall not be used nor shall they be possessed on any boat taking rockfish and lingcod with mesh smaller than 4 1/8 inches when used in Districts 2615 and 2620 north of Point Buchon, or with mesh smaller than 4 1/8 inches when used in District 2620 south of Point Buchon or in District 2625. Drift gill nets and set gill nets used or possessed on any boat taking rockfish and lingcod in District 2615, 2620, or 2625, shall not be constructed of twine larger than number 6 nylon, except that the bottom 15 meshes may be constructed of heavier twine.

(4) In District 2620 south of Point Sal and in District 2625, drift gill nets and set gill nets shall not be used to take rockfish and lingcod with the mesh of the net in waters less than 70 fathoms in depth, except that those nets shall not be used in waters less than 100 fathoms in depth at the Sixty Mile Bank.

(5) Loads or lots of fish taken in the areas described in paragraphs 1 to 4, inclusive, may contain 200 pounds or less of rockfish and lingcod in combination, but in no instance more than 100 pounds of rockfish.

(6) Gill nets shall not be used to take rockfish in District 2645.

Comment. Section 18085 continues former Fish and Game Code Section 8693.

Section 18085 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8693 has been continued in this section without change, except to update cross-references to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18090. District 2630

18090. In District 2630, gill nets may not be used, nor may they be possessed on any boat.

Comment. Section 18090 continues former Fish and Game Code Section 8694.

Section 18090 is governed by Section 16865, a section that codifies and implements Section 4 of Article X B of the California Constitution. See Section 16850.1.

To avoid any possible impairment of constitutional requirements, former Section 8694 has been continued in this section without change, except to update a cross-reference to reflect renumbering required by the recodification of this code.

When enacting the bill that added this section, the Legislature did not evaluate the relationship between this section and Article X B of the California Constitution. See Section 16800.

§ 18095. South of Point Reyes headlands

18095. Except as otherwise provided, set gill nets may be used south of a line extending 245° magnetic from the western point of the Point Reyes headlands in Marin County except for the taking of salmon.

Comment. Section 18095 continues former Fish and Game Code Section 8696.

1 Section 18095 is governed by Section 16865, a section that codifies and implements Section 4
2 of Article X B of the California Constitution. See Section 16850.1.

3 To avoid any possible impairment of constitutional requirements, former Section 8696 has
4 been continued in this section without change.

5 When enacting the bill that added this section, the Legislature did not evaluate the relationship
6 between this section and Article X B of the California Constitution. See Section 16800.

7 **§ 18100. Conversion of gill net to trammel net**

8 18100. Any line used on a gill net which shall tend to cause the webbing of such
9 gill net to bag or hang slack shall cause such net to lose its identity as a gill net and
10 become a trammel net.

11 **Comment.** Section 18100 continues former Fish and Game Code Section 8700.

12 Section 18100 is governed by Section 16865, a section that codifies and implements Section 4
13 of Article X B of the California Constitution. See Section 16850.1.

14 To avoid any possible impairment of constitutional requirements, former Section 8700 has
15 been continued in this section without change.

16 When enacting the bill that added this section, the Legislature did not evaluate the relationship
17 between this section and Article X B of the California Constitution. See Section 16800.

18 CHAPTER 5. TRAMMEL NETS

19 **Comment.** The provisions appearing in this chapter continue the provisions of former Article 6
20 (commencing with Section 8720) of Chapter 3 of Part 3 of Division 6 of the Fish and Game
21 Code, which are governed by Section 4(b) of Article X B of the California Constitution.

22 **§ 18200. “Trammel net”**

23 18200. “Trammel net” includes entangling nets constructed of more than one
24 wall of webbing.

25 **Comment.** Section 18200 continues former Fish and Game Code Section 8720.

26 Section 18200 is governed by Section 16865, a section that codifies and implements Section 4
27 of Article X B of the California Constitution. See Section 16850.1.

28 To avoid any possible impairment of constitutional requirements, former Section 8720 has
29 been continued in this section without change.

30 When enacting the bill that added this section, the Legislature did not evaluate the relationship
31 between this section and Article X B of the California Constitution. See Section 16800.

32 **§ 18205. Districts 2505, 2525, and 2540**

33 18205. In Districts 2505, 2525, and 2540, trammel nets may not be possessed on
34 any boat.

35 **Comment.** Section 18205 continues former Fish and Game Code Section 8721.

36 Section 18205 is governed by Section 16865, a section that codifies and implements Section 4
37 of Article X B of the California Constitution. See Section 16850.1.

38 To avoid any possible impairment of constitutional requirements, former Section 8721 has
39 been continued in this section without change, except to update cross-references to reflect
40 renumbering required by the recodification of this code.

41 When enacting the bill that added this section, the Legislature did not evaluate the relationship
42 between this section and Article X B of the California Constitution. See Section 16800.

1 **§ 18210. Districts 2590, 2615, 2620, and 2625**

2 18210. (a) Except as otherwise provided, in Districts 2590, 2615, 2620, and
3 2625, drift and set trammel nets may be used if the meshes are at least 8 1/2 inches
4 in length, except that these nets may not be used in District 2620 within 750 feet
5 of any pier or jetty, nor may they be used for the taking of salmon.

6 (b) This section shall become operative on August 15, 1989.

7 **Comment.** Section 18210 continues former Fish and Game Code Section 8724.

8 Section 18210 is governed by Section 16865, a section that codifies and implements Section 4
9 of Article X B of the California Constitution. See Section 16850.1.

10 To avoid any possible impairment of constitutional requirements, former Section 8724 has
11 been continued in this section without change, except to update cross-references to reflect
12 renumbering required by the recodification of this code.

13 When enacting the bill that added this section, the Legislature did not evaluate the relationship
14 between this section and Article X B of the California Constitution. See Section 16800.

15 **§ 18215. District 2630**

16 18215. In District 2630, trammel nets may not be used, nor may they be
17 possessed on any boat.

18 **Comment.** Section 18215 continues former Fish and Game Code Section 8725.

19 Section 18215 is governed by Section 16865, a section that codifies and implements Section 4
20 of Article X B of the California Constitution. See Section 16850.1.

21 To avoid any possible impairment of constitutional requirements, former Section 8725 has
22 been continued in this section without change, except to update a cross-reference to reflect
23 renumbering required by the recodification of this code.

24 When enacting the bill that added this section, the Legislature did not evaluate the relationship
25 between this section and Article X B of the California Constitution. See Section 16800.

26 CHAPTER 6. SPECIAL PUNISHMENT

27 **§ 18250. Violation of Section 18040, 18045, 18050, or 18065**

28 18250. (a) The punishment for a first conviction of a violation of Section 18040,
29 18045, 18050, or 18065 is a fine of not more than five thousand dollars (\$5,000),
30 or imprisonment in a county jail for a period not to exceed six months, or the
31 revocation of any license issued pursuant to Chapter 2 (commencing with Section
32 20300) of Title 9, or any combination of these penalties.

33 (b) The punishment for a second or subsequent conviction of a violation of
34 Section 18040, 18045, 18050, or 18065, which offense occurred within five years
35 of another offense which resulted in a conviction of Section 18040, 18045, 18050,
36 or 18065 is a fine of not more than ten thousand dollars (\$10,000), or
37 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or
38 imprisonment in a county jail for a period not to exceed one year, or the revocation
39 of any license issued pursuant to Chapter 2 (commencing with Section 20300) of
40 Title 9, or any combination of these penalties.

41 **Comment.** Section 18250 continues former Fish and Game Code Section 12004 without
42 substantive change.

CHAPTER 7. TAKE OF SHARK AND SWORDFISH

§ 18300. Required permit

18300. (a) Notwithstanding subdivision (a) of Section 43655, shark and swordfish shall not be taken for commercial purposes with drift gill nets except under a valid drift gill net shark and swordfish permit issued to that person that has not been suspended or revoked and is issued to at least one person aboard the boat.

(b) A drift gill net shark and swordfish permit shall not be required for the taking of sharks with drift gill nets with a mesh size smaller than eight inches in stretched mesh and twine size no. 18 or the equivalent of this twine size or smaller.

Comment. Section 18300 continues former Fish and Game Code Section 8561 without substantive change.

§ 18305. Transfer of permit

18305. (a) Notwithstanding Section 22505, a permit issued pursuant to Section 18300 may be transferred by the permittee only if one of the following conditions is met:

(1) The permittee has held the permit for three or more years.

(2) The permittee is permanently injured or suffers a serious illness that will result in a hardship, as determined in a written finding by the director, to the permittee or his or her family if the permit may not otherwise be transferred or upon dissolution of a marriage where the permit is held to be community property.

(3) The permittee has died and his or her surviving spouse, heirs, or estate seeks to transfer the permit within six months of the death of the permittee or, with the written approval of the director, within the length of time that it may reasonably take to effect the transfer.

(b) A permit may be transferred only to a person who holds a valid general gill net permit issued to that person pursuant to Section 18005 that has not been suspended or revoked.

(c) The transfer of a permit shall only become effective upon notice from the department. An application for transfer shall be submitted to the department with such reasonable proof as the department may require to establish the qualification of the person the permit is to be transferred to, the payment to the department of a transfer fee of one thousand five hundred dollars (\$1,500), and a written disclosure, filed under penalty of perjury, of the terms of the transfer.

(d) Any restrictions on participation that were required in a permit transferred pursuant to Section 22505 before January 1, 1990, are of no further force or effect.

Comment. Section 18305 continues former Fish and Game Code Section 8561.5 without substantive change.

§ 18310. Application

18310. Applications delivered to a department office after April 30, or if mailed,

1 postmarked after April 30, shall not be accepted unless approved by the
2 commission pursuant to Section 18340.

3 **Comment.** Section 18310 continues former Fish and Game Code Section 8562 without
4 substantive change.

5 **§ 18315. Possession and use of permit**

6 18315. (a) Except as provided in subdivision (b), the permittee shall be aboard
7 the vessel and shall be in possession of a valid drift gill net shark and swordfish
8 permit when engaged in operations authorized by the permit.

9 (b) A permittee may have any person serve in his or her place on the permittee's
10 vessel and engage in fishing under his or her drift gill net shark and swordfish
11 permit for not more than 15 calendar days in any one year, except that a longer
12 period may be allowed in the event of serious illness. A permittee shall notify the
13 department's Long Beach office of a substitution of 15 days or less per calendar
14 year, by certified letter or telegram at least 24 hours prior to the commencement of
15 the trip. Written authorization for a substitution of greater than 15 days shall be
16 obtained from the director and shall be given only on the director's finding that the
17 permittee will not be available to engage in the activity due to serious illness,
18 supported by medical evidence. An application for a substitution of greater than 15
19 days shall be made to the Department of Fish and Game, Headquarters Office,
20 Sacramento, and shall contain such information as the director may require. Any
21 denial of the substitution may be appealed to the commission.

22 **Comment.** Section 18315 continues former Fish and Game Code Section 8563 without
23 change.

24 **§ 18320. Specification of vessel**

25 18320. When the permittee applies for a drift gill net shark and swordfish
26 permit, the permittee shall specify the vessel he or she will use in operations
27 authorized by the permit. Transfer to another vessel shall be authorized by the
28 department upon receipt of a written request from the permittee, accompanied by a
29 transfer fee of one hundred thirty dollars (\$130), as follows:

30 (a) One transfer requested between February 1 and April 30 shall be made by the
31 department upon request and payment of the fee.

32 (b) Any transfer, except as provided in subdivision (a), shall be authorized by
33 the department only after receipt of proof of a compelling reason, which shall be
34 submitted with the request for transfer, such as the sinking of the vessel specified
35 for use in operations authorized by the permit.

36 **Comment.** Section 18320 continues former Fish and Game Code Section 8564 without
37 change.

38 **§ 18325. Fee**

39 18325. The fee for a drift gill net shark and swordfish permit shall be three
40 hundred thirty dollars (\$330).

1 **Comment.** Section 18325 continues former Fish and Game Code Section 8567 without
2 change.

3 **§ 18330. Eligibility for permit**

4 18330. Drift gill net shark and swordfish permits shall be issued to any prior
5 permittee who possesses a valid drift gill net shark and swordfish permit issued
6 pursuant to this section, but only if the permittee meets both of the following
7 requirements:

8 (a) Possesses a valid permit for the use of gill nets authorized pursuant to
9 Section 18005.

10 (b) Possessed a valid drift gill net shark and swordfish permit during the
11 preceding season and that permit was not subsequently revoked.

12 **Comment.** Section 18330 continues former Fish and Game Code Section 8568 without
13 change.

14 **§ 18335. Minimum landing requirement**

15 18335. Any person holding a valid drift gill net shark and swordfish permit on
16 or after January 1, 2000, who did not make, on or after January 1, 2000, the
17 minimum landings required under subdivision (c) of Section 18330, is eligible for
18 that permit when that person meets all other qualifications for the permit.

19 **Comment.** Section 18335 continues former Fish and Game Code Section 8568.5 without
20 substantive change.

21 **§ 18340. Conditions for late application**

22 18340. The commission may establish conditions for the issuance of a permit if
23 the person's drift gill net shark and swordfish permit was revoked during a
24 preceding season or if the person possessed a valid permit during the preceding
25 season but did not apply for renewal of his or her permit on or before April 30.
26 The applicant for a permit under this section may appeal to the director for the
27 issuance of the permit under those conditions.

28 **Comment.** Section 18340 continues former Fish and Game Code Section 8569 without
29 change.

30 **§ 18345. Allowed locations and conditions for use of net**

31 18345. Drift gill nets may be used to take shark and swordfish under the permit
32 provided in this chapter, subject to Section 16860 and all of the following
33 restrictions:

34 (a) From June 1 to November 15, inclusive, shark or swordfish gill nets shall not
35 be in the water from two hours after sunrise to two hours before sunset east of a
36 line described as follows:

37 From a point beginning at Las Pitas Point to San Pedro Point on Santa Cruz
38 Island, thence to Gull Island Light, thence to the northeast extremity of San
39 Nicolas Island, thence along the high water mark on the west side of San Nicolas
40 Island to the southeast extremity of San Nicolas Island, thence to the northwest

1 extremity of San Clemente Island, thence along the high water mark on the west
2 side of San Clemente Island to the southeast extremity of San Clemente Island,
3 thence along a line running 150° true from the southeast extremity of San
4 Clemente Island to the westerly extension of the boundary line between the
5 Republic of Mexico and San Diego County.

6 (b)(1) The total maximum length of a shark or swordfish gill net on the net reel
7 on a vessel, on the deck of the vessel, and in the water at any time shall not exceed
8 6,000 feet in float line length. The float line length shall be determined by
9 measuring the float line, as tied, of all the net panels, combined with any other
10 netted lines. The existence of holes, tears, or gaps in the net shall have no bearing
11 on the measurement of the float line. The float line of any net panels with holes,
12 tears, or gaps shall be included in the total float line measurement.

13 (2) Any shark or swordfish gill net on the reel shall have the float lines of the
14 adjacent panels tied together, the lead lines of the adjacent panels tied together,
15 and the web of the adjacent panels laced together. No quick disconnect device may
16 be used unless the total maximum length of all shark and swordfish gill nets,
17 including all spare gill nets or net panels on the vessel and all gill nets or net
18 panels on the net reels on the vessel, on the deck of the vessel, stored aboard the
19 vessel, and in the water, does not exceed 6,000 feet in float line length as
20 determined under paragraph (1).

21 (3) Spare shark or swordfish gill net aboard the vessel shall not exceed 250
22 fathoms (1,500 feet) in total length, and the spare net shall be in separated panels
23 not to exceed 100 fathoms (600 feet) in float line length for each panel, with the
24 float lines and leadlines attached to each panel separately gathered and tied, and
25 the spare net panels stowed in lockers, wells, or other storage space.

26 (4) If a torn panel is replaced in a working shark or swordfish gill net, the torn
27 panel shall be removed from the working net before the replacement panel is
28 attached to the working net.

29 (c) Any end of a shark or swordfish gill net not attached to the permittee's vessel
30 shall be marked by a pole with a radar reflector. The reflector shall be at least six
31 feet above the surface of the ocean and not less than 10 inches in any dimension
32 except thickness. The permittee's permit number shall be permanently affixed to at
33 least one buoy or float that is attached to the radar reflector staff. The permit
34 number shall be at least one and one-half inches in height and all markings shall
35 be at least one-quarter inch in width.

36 (d) For the purposes of this chapter, "shark or swordfish gill net" means a drift
37 gill net of 14-inch or greater mesh size.

38 **Comment.** Section 18345 continues former Fish and Game Code Section 8573 without
39 substantive change.

40 § 18350. Mesh size

41 18350. (a) Drift gill nets with mesh size less than 14 inches in stretched mesh
42 shall not be used to take shark and swordfish by permittees operating under a drift

1 gill net shark and swordfish permit, and the permittee shall not have aboard the
2 vessel or in the water a drift gill net with mesh size less than 14 inches and more
3 than 8 inches in stretched mesh.

4 (b) No permittee shall deploy a drift gill net of less than 14-inch mesh size at the
5 time that the permittee has a shark or swordfish gill net deployed.

6 **Comment.** Section 18350 continues former Fish and Game Code Section 8574 without
7 change.

8 **§ 18355. Seasonal prohibitions**

9 18355. Drift gill nets used to take shark and swordfish under the permit provided
10 in this chapter shall not be used under the following circumstances:

11 (a) From May 1 through July 31, within six nautical miles westerly, northerly,
12 and easterly of the shoreline of San Miguel Island between a line extending six
13 nautical miles west magnetically from Point Bennett and a line extending six
14 nautical miles east magnetically from Cardwell Point and within six nautical miles
15 westerly, northerly, and easterly of the shoreline of Santa Rosa Island between a
16 line extending six nautical miles west magnetically from Sandy Point and a line
17 extending six nautical miles east magnetically from Skunk Point.

18 (b) From May 1 through July 31, within 10 nautical miles westerly, southerly,
19 and easterly of the shoreline of San Miguel Island between a line extending 10
20 nautical miles west magnetically from Point Bennett and a line extending 10
21 nautical miles east magnetically from Cardwell Point and within 10 nautical miles
22 westerly, southerly, and easterly of the shoreline of Santa Rosa Island between a
23 line extending 10 nautical miles west magnetically from Sandy Point and a line
24 extending 10 nautical miles east magnetically from Skunk Point.

25 (c) From May 1 through July 31, within a radius of 10 nautical miles of the west
26 end of San Nicolas Island.

27 (d) From August 15 through September 30, in ocean waters bounded as follows:
28 beginning at Dana Point, Orange County, in a direct line to Church Rock, Catalina
29 Island; thence in a direct line to Point La Jolla, San Diego County; and thence
30 northwesterly along the mainland shore to Dana Point.

31 (e) From August 15 through September 30, in ocean waters within six nautical
32 miles of the coastline on the northerly and easterly side of San Clemente Island,
33 lying between a line extending six nautical miles west magnetically from the
34 extreme northerly end of San Clemente Island to a line extending six nautical
35 miles east magnetically from Pyramid Head.

36 (f) From December 15 through January 31, in ocean waters within 25 nautical
37 miles of the mainland coastline.

38 **Comment.** Section 18355 continues former Fish and Game Code Section 8575 without
39 change.

1 **§ 18360. Prohibited areas**

2 18360. Drift gill nets used to take shark and swordfish under the permit provided
3 in this chapter shall not be used in the following areas:

4 (a) Within 12 nautical miles from the nearest point on the mainland shore north
5 of a line extending due west from Point Arguello.

6 (b) East of a line running from Point Reyes to Noonday Rock to the westernmost
7 point of Southeast Farallon Island to Pillar Point.

8 **Comment.** Section 18360 continues former Fish and Game Code Section 8575.5 without
9 change.

10 **§ 18365. Additional prohibitions**

11 18365. (a) Drift gill nets shall not be used to take shark or swordfish from
12 February 1 to April 30, inclusive.

13 (b) Drift gill nets shall not be used to take shark or swordfish in ocean waters
14 within 75 nautical miles from the mainland coastline between the westerly
15 extension of the California-Oregon boundary line and the westerly extension of
16 the United States-Republic of Mexico boundary line from May 1 to August 14,
17 inclusive.

18 (c) Subdivisions (a) and (b) apply to any drift gill net used pursuant to a permit
19 issued under Section 18005 or 18300, except that drift gill nets with a mesh size
20 smaller than eight inches in stretched mesh and twine size number 18, or the
21 equivalent of this twine size, or smaller, used pursuant to a permit issued under
22 Section 18005, may be used to take species of sharks other than thresher shark,
23 shortfin mako shark, and white shark during the periods specified in subdivisions
24 (a) and (b). However, during the periods of time specified in subdivisions (a) and
25 (b), not more than two thresher sharks and two shortfin mako sharks may be
26 possessed and sold if taken incidentally in drift gill nets while fishing for
27 barracuda or white seabass and if at least 10 barracuda or five white seabass are
28 possessed and landed at the same time as the incidentally taken thresher or shortfin
29 mako shark. No thresher shark or shortfin mako shark taken pursuant to this
30 subdivision shall be transferred to another vessel before landing the fish. Any
31 vessel possessing thresher or shortfin mako sharks pursuant to this section shall
32 not have any gill or trammel net aboard that is constructed with a mesh size
33 greater than eight inches in stretched mesh and twine size greater than number 18,
34 or the equivalent of a twine size greater than number 18.

35 (d) Notwithstanding the closure from May 1 to August 14, inclusive, provided
36 by subdivision (b), a permittee may land swordfish or thresher shark taken in
37 ocean waters more than 75 nautical miles from the mainland coastline in that
38 period if, for each landing during that closed period, the permittee signs a written
39 declaration under penalty of perjury that the fish landed were taken more than 75
40 nautical miles from the mainland coastline. The declaration shall be completed and
41 signed before arrival at any port in this state. Within 72 hours of the time of
42 arrival, the permittee shall deliver the declaration to the department.

(e) If any person is convicted of falsely swearing a declaration under subdivision (d), in addition to any other penalty prescribed by law, the following penalties shall be imposed:

(1) The fish landed shall be forfeited, or, if sold, the proceeds from the sale shall be forfeited, pursuant to Sections 8600, 8605, 8615, and 8620.

(2) All shark or swordfish gill nets possessed by the permittee shall be seized and forfeited pursuant to Section 8630 or 15400.

(f) From August 15 of the year of issue to January 31, inclusive, of the following year, swordfish may be taken under a permit issued pursuant to this chapter.

Comment. Section 18365 continues former Fish and Game Code Section 8576 without substantive change.

§ 18370. Take of thresher shark

18370. Thresher shark taken with drift gill nets shall not have the pelvic fin severed from the carcass until after the shark is brought ashore.

Comment. Section 18370 continues former Fish and Game Code Section 8576.5 without change.

§ 18375. Closure of fishery by director

18375. Notwithstanding subdivision (a) of Section 43655, the director may close the drift gill net shark and swordfish fishery, the swordfish harpoon fishery, or any area where either or both fisheries are conducted, if, after a public hearing, the director determines the action is necessary to protect the swordfish or thresher shark and bonito (mako) shark resources.

The director shall reopen a fishery or any fishing areas previously closed pursuant to this section if the director determines that the conditions which necessitated the closure no longer exist.

Comment. Section 18375 continues former Fish and Game Code Section 8577 without substantive change.

§ 18380. Surrender of permit

18380. A permittee shall be subject to the provisions of this chapter whenever the permittee is using a drift gill net, unless the permittee has surrendered his or her permit to the department. A permittee may surrender his or her permit by notifying the department's Long Beach office of his or her intentions by telegram or certified letter and by sending or delivering his or her permit to a department office. A permittee may reclaim his or her permit at any time during regular working hours, if the permit has not been suspended or revoked.

Comment. Section 18380 continues former Fish and Game Code Section 8579 without change.

§ 18385. Sale of swordfish

18385. It is unlawful for any permittee to sell swordfish taken by him or her to other than the licensees described in Chapter 2 (commencing with Section 20300)

of Title 9.

Comment. Section 18385 continues former Fish and Game Code Section 8580 without substantive change.

§ 18390. Revocation or suspension of fish business license

18390. Any license issued pursuant to Chapter 2 (commencing with Section 20300) of Title 9 may be revoked or suspended by the commission, when requested by the department, upon a conviction for a violation of Section 21000 for failure to report, or for inaccurately reporting, shark or swordfish landings by fishermen operating under permits issued pursuant to Section 18300, or subdivision (a) of Section 43655.

Comment. Section 18390 continues former Fish and Game Code Section 8581 without substantive change.

§ 18395. Marlin

18395. (a) The Legislature finds and declares that the intent of this chapter is not to permit or encourage the taking of marlin for commercial purposes.

(b) It shall be a misdemeanor for any person operating under a permit pursuant to this chapter to sell or possess for sale or personal use any marlin. In the event a marlin is taken incidentally in a drift gill net, the permittee shall notify the department immediately that the fish is on the boat. No marlin may be removed from the boat except for delivery to the department.

Comment. Section 18395 continues former Fish and Game Code Section 8582 without change.

CHAPTER 8. TAKE OF OTHER FISH

§ 18500. Yellowtail, barracuda, and white sea bass

18500. (a) It is unlawful to use any purse seine or round haul net to take yellowtail, barracuda, or white sea bass.

(b) It is unlawful to possess any yellowtail, barracuda, or white sea bass, except those taken south of the international boundary between the United States and Mexico, and imported into the state under regulations of the commission as provided in Section 38705, subdivision (a) or (b) of Section 38875, or Section 44650, on any boat carrying or using any purse seine or round haul net, including, but not limited to, a bait net as described in Section 235.

(c) Gill nets with meshes of a minimum length of 3 1/2 inches may be used to take yellowtail and barracuda.

(d) Gill nets with meshes of a minimum length of six inches may be used to take white sea bass; however, during the period from June 16 to March 14, inclusive, not more than 20 percent by number of a load of fish may be white seabass 28 inches or more in total length, up to a maximum of 10 white seabass per load, if taken in gill nets or trammel nets with meshes from 3 1/2 to 6 inches in length.

(e) Notwithstanding the provisions of this section, the department may issue permits to hook and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of taking bait for their own use only.

Comment. Section 18500 continues former Fish and Game Code Section 8623(c) and (d) without change.

§ 18505. California halibut generally

18505. (a) Except as otherwise provided in this code, set gill nets and trammel nets with mesh size of not less than 8 1/2 inches may be used to take California halibut.

(b) Except as provided in subdivision (c), not more than 1,500 fathoms (9,000 feet) of gill net or trammel net shall be fished in combination each day for California halibut from any vessel in ocean waters.

(c) Not more than 1,000 fathoms (6,000 feet) of gill net or trammel net shall be fished in combination each day for California halibut from any vessel in ocean waters between a line extending due west magnetic from Point Arguello in Santa Barbara County and a line extending 172° magnetic from Rincon Point in Santa Barbara County to San Pedro Point at the east end of Santa Cruz Island in Santa Barbara County, then extending southwesterly 188° magnetic from San Pedro Point on Santa Cruz Island.

(d) This section shall become operative on August 15, 1989.

Comment. Section 18505 continues former Fish and Game Code Section 8625 without change.

§ 18510. Special rules for California halibut

18510. (a) Notwithstanding Section 18505, and where consistent with the determination made pursuant to subdivisions (b) and (c), the director may reduce the minimum mesh size permitted for gill and trammel nets used to take California halibut from 8 1/2 inches to not less than 8 inches in any or all areas south of a line extending 240° magnetic from the boundary line between the Counties of Los Angeles and Ventura.

(b) If, on or before October 1, 1990, the department determines that commercial landings of California halibut taken south of the line extending 240° magnetic from the boundary line between the Counties of Los Angeles and Ventura in the period between September 1, 1989, and August 31, 1990, decline by 10 percent or more compared with landings of California halibut taken in this area during the period between September 1, 1988, and August 31, 1989, the department shall assess the impact of the 8 1/2 inch minimum mesh size restriction on the California halibut fishery in the area described in subdivision (a). The assessment shall include, but is not limited to, an analysis of landing data, including landings of California halibut in Los Angeles, Orange, and San Diego Counties, the age and size composition of the catch, and the department's monitoring at sea of the gill and trammel net fishery.

(c) If the department determines that the 8 1/2 inch minimum mesh size, established pursuant to Section 18505 has directly resulted in a decline of 10 percent or more in landings of California halibut south of the line extending 240° magnetic from the boundary between the Counties of Los Angeles and Ventura, the director shall hold a public hearing in the area affected to make findings and take public testimony prior to taking any action pursuant to subdivision (a).

(d) This section shall become operative on August 15, 1989.

Comment. Section 18510 continues former Fish and Game Code Section 8626 without substantive change.

TITLE 5. FISHING LINES GENERALLY

CHAPTER 1. GENERAL PROVISIONS

§ 18700. Legislative declaration

18700. The Legislature finds and declares that it is in the best interest of the people of the state and California's marine resources and fisheries that the use of commercial hook and line fishing gear be regulated in a manner that assures the orderly development of the fisheries, maintenance of viable resources, and sustainable and satisfying commercial and recreational harvests.

Comment. Section 18700 continues former Fish and Game Code Section 9025.1 without change.

§ 18705. Permitted length

18705. Notwithstanding Section 14300 and Chapter 4 (commencing with Section 18950) of Title 5, it is unlawful to use a fishing line, including, but not limited to, a troll line or handline, that is more than 900 feet in length, except when used as a set line as provided in Sections 685, 690, and subdivisions (a) and (b) of Section 18900.

Comment. Section 18705 continues former Fish and Game Code Section 9028 without substantive change. Existing Fish and Game Code Section 9025, which is presently cross-referenced in existing Section 9028, was renumbered without change as Section 9025.5 in 1995. See 1995 Cal. Stat. ch. 677.

CHAPTER 2. SPECIAL DISTRICT RULES

§ 18800. District 2570

18800. (a) In District 2570, notwithstanding Section 18705, a fishing line that is anchored to the ocean bottom at one end and attached at the surface to a fishing vessel or a buoy may be used, except under any of the following circumstances:

(1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

(2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface vessel or buoy.

(3) If any hooks are attached to the upper one-third of the line.

(b) A buoy attached to the surface end of a fishing line used pursuant to subdivision (a) shall display above its waterline, in numerals at least two inches high, the fisherman's commercial fishing license identification number.

(c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 18705, in waters of the district within one mile of the mainland shore, the following additional restrictions apply:

(1) It is unlawful to use more than 150 hooks on a vessel to take a fish for commercial purposes when using fishing lines authorized pursuant to this title.

(2) Not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this title, except that a single troll line with not more than 30 hooks may be used to take California halibut.

(3) Each fishing line used pursuant to this title that is not attached to a fishing vessel shall be buoyed, and the commercial fishing license identification number issued to the permittee who is using the fishing line shall be marked on and visible on the upper one-half of each buoy, in numbers at least two inches high.

Comment. Subdivisions (a) and (b) of Section 18800 continue the part of former Fish and Game Code Section 9029 applicable to former Fish and Game District 6 without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to former Fish and Game District 6 without substantive change.

Note. Existing Fish and Game Code Section 9029(c) (which would be continued in part by proposed Section 18800(c)) requires a fishing line used in specified Fish and Game districts to be attached to a buoy displaying "the fisherman's" identification number. Although the section further provides that the term "fisherman's identification number" refers to the number of "the person's" commercial fishing license issued pursuant to Section 7850, it remains unclear whether this reference is intended to refer to the *owner* of the line, or the person *fishing* with the line.

This same issue is presented by several other sections of the existing Fish and Game Code, but it is possible that context in these sections dictates different conclusions. For example, this same reference to the display on a buoy of the "fisherman's" identification number is part of the general regulation of set nets in existing Section 8601.5, where the context of that section seems to suggest the required marking should be that of the *owner* of the net. (See Note following proposed Section 15600.) On the other hand, existing Section 9027, another section that governs the use of fishing lines in a specially described geographic area, expressly requires the identification number displayed on the buoy attached to a fishing line "the commercial fishing license identification number issued... to the permittee who is *using* the fishing line."

The Commission invites comment on whether existing Section 9029(c) is intended to require the display of the commercial fishing license identification number of the *owner* of the fishing line, or of the fisherman who is presently *fishing* with the line.

§ 18805. District 2575

18805. (a) In District 2575, notwithstanding Section 18705, a fishing line that is anchored to the ocean bottom at one end and attached at the surface to a fishing vessel or a buoy may be used, except under any of the following circumstances:

(1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

1 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
2 vessel or buoy.

3 (3) If any hooks are attached to the upper one-third of the line.

4 (b) A buoy attached to the surface end of a fishing line used pursuant to
5 subdivision (a) shall display above its waterline, in numerals at least two inches
6 high, the fisherman's commercial fishing license identification number.

7 (c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or
8 Section 18705, in waters of the district within one mile of the mainland shore
9 excluding ocean waters between a line extending 203 degrees magnetic from
10 Gitchell Creek and a line extending 252 degrees magnetic from False Cape in
11 Humboldt County, the following additional restrictions apply:

12 (1) It is unlawful to use more than 150 hooks on a vessel to take a fish for
13 commercial purposes when using fishing lines authorized pursuant to this title.

14 (2) Not more than 15 hooks shall be attached to any one fishing line, and no
15 fishing line shall be attached to another fishing line, while those lines are being
16 used for commercial fishing pursuant to this title, except that a single troll line
17 with not more than 30 hooks may be used to take California halibut.

18 (3) Each fishing line used pursuant to this title that is not attached to a fishing
19 vessel shall be buoyed, and the commercial fishing license identification number
20 issued to the permittee who is using the fishing line shall be marked on and visible
21 on the upper one-half of each buoy, in numbers at least two inches high.

22 (d) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or
23 Section 19005, in waters of the district within one mile of the mainland shore, it is
24 unlawful to use a set line, vertical fishing line, or troll line to take any fish other
25 than salmon or California halibut for a commercial purpose, from sunset on Friday
26 to sunset on the following Sunday, or from sunset of the day before a state
27 recognized legal holiday until sunset on that holiday.

28 **Comment.** Subdivisions (a) and (b) of Section 18805 continue the part of former Fish and
29 Game Code Section 9029 applicable to former Fish and Game District 7 without substantive
30 change.

31 Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to
32 former Fish and Game District 7 without substantive change.

33 Subdivision (d) continues the parts of the first and third sentences of former Fish and Game
34 Code Section 9029.5 applicable to former Fish and Game District 7 without substantive change.

35 **§ 18810. District 2590**

36 18810. (a) In District 2590, notwithstanding Section 18705, a fishing line that is
37 anchored to the ocean bottom at one end and attached at the surface to a fishing
38 vessel or a buoy may be used, except under any of the following circumstances:

39 (1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

40 (2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface
41 vessel or buoy.

42 (3) If any hooks are attached to the upper one-third of the line.

(b) A buoy attached to the surface end of a fishing line used pursuant to subdivision (a) shall display above its waterline, in numerals at least two inches high, the fisherman's commercial fishing license identification number.

(c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 18705, in waters of the district within one mile of the mainland shore excluding ocean waters between a line extending 245 degrees magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending due west magnetic from Point Bolinas in Marin County, the following additional restrictions apply:

(1) It is unlawful to use more than 150 hooks on a vessel to take a fish for commercial purposes when using fishing lines authorized pursuant to this title.

(2) Not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this title, except that a single troll line with not more than 30 hooks may be used to take California halibut.

(3) Each fishing line used pursuant to this title that is not attached to a fishing vessel shall be buoyed, and the commercial fishing license identification number issued to the permittee who is using the fishing line shall be marked on and visible on the upper one-half of each buoy, in numbers at least two inches high.

(d) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 19010, in waters of the district within one mile of the mainland shore, it is unlawful to use a set line, vertical fishing line, or troll line to take any fish other than salmon or California halibut for a commercial purpose, from sunset on Friday to sunset on the following Sunday, or from sunset of the day before a state recognized legal holiday until sunset on that holiday.

Comment. Subdivisions (a) and (b) of Section 18810 continue the part of former Fish and Game Code Section 9029 applicable to former Fish and Game District 10 without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 9027 applicable to former Fish and Game District 10 without substantive change.

Subdivision (d) continues the parts of the first and third sentences of former Fish and Game Code Section 9029.5 applicable to former Fish and Game District 10 without substantive change.

§ 18815. District 2615

18815. (a) In District 2615, notwithstanding Section 18705, a fishing line that is anchored to the ocean bottom at one end and attached at the surface to a fishing vessel or a buoy may be used, except under any of the following circumstances:

(1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

(2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface vessel or buoy.

(3) If any hooks are attached to the upper one-third of the line.

(b) A buoy attached to the surface end of a fishing line used pursuant to subdivision (a) shall display above its waterline, in numerals at least two inches high, the fisherman's commercial fishing license identification number.

(c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 18705, in waters of the district within one mile of the mainland shore, the following additional restrictions apply:

(1) It is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using a fishing line authorized pursuant to this title.

(2) Not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this title.

(3) Each fishing line used pursuant to this title that is not attached to a fishing vessel shall be buoyed, and the commercial fishing license identification number issued to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(d) Subdivision (c) does not apply to persons who are fishing south of a line extending due west from Point Conception for halibut, white sea bass, sharks, skates, or rays if at least 80% of the total number of fish possessed by persons aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

Comment. Subdivisions (a) and (b) of Section 18815 continue the part of former Fish and Game Code Section 9029 applicable to former Fish and Game District 17 without substantive change.

Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5 applicable to former Fish and Game District 17 without substantive change.

Note. Proposed Section 18815(d) is intended to restate the part of existing Fish and Game Code Section 9027.5(c) applicable to existing Fish and Game District 17 to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.”

The Commission invites comment on whether proposed Section 18815(d) correctly restates the part of existing Section 9027.5(c) applicable to existing Fish and Game District 17.

§ 18820. District 2620

18820. (a) In District 2620, notwithstanding Section 18705, a fishing line that is anchored to the ocean bottom at one end and attached at the surface to a fishing vessel or a buoy may be used, except under any of the following circumstances:

(1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

(2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface vessel or buoy.

(3) If any hooks are attached to the upper one-third of the line.

(b) A buoy attached to the surface end of a fishing line used pursuant to subdivision (a) shall display above its waterline, in numerals at least two inches high, the fisherman’s commercial fishing license identification number.

(c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 18705, in waters of the district within one mile of the mainland shore, the following additional restrictions apply:

(1) It is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using a fishing line authorized pursuant to this title.

(2) Not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this title.

(3) Each fishing line used pursuant to this title that is not attached to a fishing vessel shall be buoyed, and the commercial fishing license identification number issued to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(d) Subdivision (d) does not apply to persons who are fishing south of a line extending due west from Point Conception for halibut, white sea bass, sharks, skates, or rays if at least 80% of the total number of fish possessed by persons aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

Comment. Subdivisions (a) and (b) of Section 18820 continues the part of former Fish and Game Code Section 9029 applicable to former Fish and Game District 18 without substantive change.

Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5 applicable to former Fish and Game District 18 without substantive change.

Note. Proposed Section 18820(d) is intended to restate the part of existing Fish and Game Code Section 9027.5(c) applicable to existing Fish and Game District 18 to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.”

The Commission invites comment on whether proposed Section 18820(d) correctly restates the part of existing Section 9027.5(c) applicable to existing Fish and Game District 18.

§ 18825. District 2625

18825. (a) In District 2625, notwithstanding Section 18705, a fishing line that is anchored to the ocean bottom at one end and attached at the surface to a fishing vessel or a buoy may be used, except under any of the following circumstances:

(1) To take shortfin mako (bonito) sharks, thresher sharks, swordfish, or marlin.

(2) If the fishing line exceeds 3,000 feet in length, from the anchor to the surface vessel or buoy.

(3) If any hooks are attached to the upper one-third of the line.

(b) A buoy attached to the surface end of a fishing line used pursuant to subdivision (a) shall display above its waterline, in numerals at least two inches high, the fisherman’s commercial fishing license identification number.

(c) Notwithstanding subdivision (a), subdivision (a) or (b) of Section 18900, or Section 18705, in waters of the district within one mile of the mainland shore, the following additional restrictions apply:

(1), It is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using a fishing line authorized pursuant to this title.

(2) Not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this title.

(3) Each fishing line used pursuant to this title that is not attached to a fishing vessel shall be buoyed, and the commercial fishing license identification number issued to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(d) Subdivision (c) does not apply to persons who are fishing south of a line extending due west from Point Conception for halibut, white sea bass, sharks, skates, or rays if at least 80% of the total number of fish possessed by persons aboard the vessel are halibut, white sea bass, sharks, skates, and rays.

Comment. Subdivisions (a) and (b) of Section 18825 continue the part of former Fish and Game Code Section 9029 applicable to former Fish and Game District 19 without substantive change.

Subdivisions (c) and (d) restate the part of former Fish and Game Code Section 9027.5 applicable to former Fish and Game District 19 without substantive change.

Note. Proposed Section 18825(d) is intended to restate the part of existing Fish and Game Code Section 9027.5(c) applicable to existing Fish and Game District 19 to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.”

The Commission invites comment on whether proposed Section 18825(d) correctly restates the part of existing Section 9027.5(c) applicable to existing Fish and Game District 19.

CHAPTER 3. SET LINES

§ 18900. Set line

18900. (a) A set line may be used in Districts 2570, 2575, 2590, 2615, 2620, and 2625.

(b) It is unlawful to use a set line with hooks more than 100 feet above the anchor or ocean bottom.

(c) A set line shall be marked at both ends with buoys displaying above their waterlines, in numerals at least 2 inches high, the owner’s commercial fishing license identification number.

Comment. Subdivisions (a) and (b) of Section 18900 continue former Fish and Game Code

Section 9026 without substantive change.

Subdivision (c) continues the part of former Fish and Game Code Section 8601.5(a) applicable to set lines without substantive change.

Note. Existing Fish and Game Code Section 8601.5(a) requires both a set *net* and a set *line* to be attached to a buoy displaying “the fisherman’s” identification number. It is unclear whether this reference is intended to refer to the commercial fisherman who *owns* the net or line, or the commercial fisherman *fishing* with the net or line.

The Commission has suggested that, as much of the remainder of Section 8601.5 appears to relate to the responsibilities of the owner of a set net, this display requirement in Section 8601.5, at least with regard to a set *net*, is meant to refer to the owner of the net. (See Note following proposed Section 15600.) If this interpretation is correct, it would suggest that the display requirement relating to a set *line* also refers to the owner of the line, and proposed Section 18900(c) therefore tentatively incorporates that interpretation.

On the other hand, existing Section 9027, which governs the use of fishing lines in a specially described geographic area, expressly requires the identification number displayed on the buoy attached to a fishing line “the commercial fishing license identification number issued... to the permittee who is *using* the fishing line.”

The Commission invites comment on whether the display requirement in existing Section 8601.5 relating to the use of a set *line* is intended to require the display of the commercial fishing license identification number of the *owner* of the line, or of the fisherman who is presently *fishing* with the line.

CHAPTER 4. TROLL LINES

Article 1. General Provisions

§ 18950. Troll line

18950. A troll line or handline having not more than two hooks (plugs excepted) may be used in any district.

Comment. Section 18950 continues the first part of former Fish and Game Code Section 9025.5(a) without substantive change.

Article 2. Special District Rules

§ 19000. District 2570

19000. In District 2570, a troll line with more than two hooks may be used.

Comment. Section 19000 continues the second part of former Fish and Game Code Section 9025.5(a) applicable to former Fish and Game District 6 without substantive change.

§ 19005. District 2575

19005. In District 2575, a troll line with more than two hooks may be used.

Comment. Section 19005 continues the second part of former Fish and Game Code Section 9025.5(a) applicable to former Fish and Game District 7 without substantive change.

§ 19010. District 2590

19010. (a) In District 2590, a troll line with more than two hooks may be used.

(b) In that part of the district in Tomales Bay, south of a line extending 252 degrees magnetic from the western tip of Toms Point to the opposite shore, the use of troll lines or handlines is subject to the following restrictions:

(1) A commercial fisherman shall not use more than four troll lines or handlines at any time with not more than two hooks attached to each line.

(2) When more than one commercial fisherman is aboard a vessel, not more than six lines with a maximum of two hooks per line may be fished aboard that vessel.

Comment. Subdivision (a) of Section 19010 continues the second part of former Fish and Game Code Section 9025.5(a) applicable to former Fish and Game District 10 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 9025.5(c) applicable to former Fish and Game District 10 without substantive change.

§ 19015. District 2595

19015. (a) In District 2595, a troll line with more than two hooks may be used west of the Golden Gate Bridge.

(b) In that part of the district east of the Golden Gate Bridge, the use of troll lines or handlines is subject to the following restrictions:

(1) A commercial fisherman shall not use more than four troll lines or handlines at any time with not more than two hooks attached to each line.

(2) When more than one commercial fisherman is aboard a vessel, not more than six lines with a maximum of two hooks per line may be fished aboard that vessel.

Comment. Subdivision (a) of Section 19015 continues the second part of former Fish and Game Code Section 9025.5(a) applicable to former Fish and Game District 11 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 9025.5(c) applicable to former Fish and Game District 11 without substantive change.

§ 19020. District 2600

19020. In District 2600, notwithstanding Section 18950, the use of troll lines or handlines is subject to the following restrictions:

(a) A commercial fisherman shall not use more than four troll lines or handlines at any time with not more than two hooks attached to each line.

(b) When more than one commercial fisherman is aboard a vessel, not more than six lines with a maximum of two hooks per line may be fished aboard that vessel.

Comment. Section 19020 continues the part of former Fish and Game Code Section 9025.5(c) applicable to former Fish and Game District 12 without substantive change.

§ 19025. District 2605

19025. (a) In District 2605, notwithstanding Section 18950, the use of troll lines or handlines is subject to the following restrictions:

(a) A commercial fisherman shall not use more than four troll lines or handlines at any time with not more than two hooks attached to each line.

(b) When more than one commercial fisherman is aboard a vessel, not more than six lines with a maximum of two hooks per line may be fished aboard that vessel.

1 **Comment.** Section 19025 continues the part of former Fish and Game Code Section 9025.5(c)
2 applicable to former Fish and Game District 13 without substantive change.

3 **§ 19030. District 2610**

4 19030. In District 2610, a troll line with more than two hooks may be used.

5 **Comment.** Section 19030 continues the second part of former Fish and Game Code Section
6 9025.5(a) applicable to former Fish and Game District 16 without substantive change.

7 **§ 19035. District 2615**

8 19035. In District 2615, a troll line with more than two hooks may be used.

9 **Comment.** Section 19035 continues the second part of former Fish and Game Code Section
10 9025.5(a) applicable to former Fish and Game District 17 without substantive change.

11 **§ 19040. District 2620**

12 19040. In District 2620, a troll line with more than two hooks may be used.

13 **Comment.** Section 19040 continues the second part of former Fish and Game Code Section
14 9025.5(a) applicable to former Fish and Game District 18 without substantive change.

15 **§ 19045. District 2625**

16 19045. In District 2625, a troll line with more than two hooks may be used.

17 **Comment.** Section 19045 continues the second part of former Fish and Game Code Section
18 9025.5(a) applicable to former Fish and Game District 19 without substantive change.

19 **§ 19050. District 2630**

20 19050. In District 2630, a troll line with more than two hooks may be used.

21 **Comment.** Section 19050 continues the second part of former Fish and Game Code Section
22 9025.5(a) applicable to former Fish and Game District 19A without substantive change.

23 **TITLE 6. TRAPS**

24 **CHAPTER 1. GENERAL PROVISIONS**

25 **§ 19200. Allowed use of traps**

26 19200. (a) Except as expressly authorized in this title, no person shall use a trap
27 to take any finfish, mollusk, or crustacean in the waters of the state for commercial
28 purposes.

29 (b) Traps may be used to take finfish in ocean waters only as authorized by this
30 title.

31 **Comment.** Section 19200 continues former Fish and Game Code Section 9000(a) and (b)
32 specifically without substantive change.

1 **§ 19205. Required permit**

2 19205. (a) Finfish, mollusks, or crustaceans shall not be taken by a person for a
3 commercial purpose in ocean waters with a trap, except under a valid general trap
4 permit issued to that person that has not been suspended or revoked.

5 (b) Any person who operates or assists in operating any trap to take a finfish,
6 mollusk or crustacean, other than a lobster or Dungeness crab as defined in or who
7 possesses or transports a finfish, mollusk or crustacean on any boat, barge, or
8 vessel when any trap is aboard, shall have a general trap permit issued to that
9 person that has not been revoked or suspended, while engaged in the activity.

10 (c) The fee for the general trap permit shall be thirty-five dollars (\$35).

11 (d) This section does not apply to the taking of lobster under Section 49700 or to
12 the taking of Dungeness crab under Section 47450.

13 **Comment.** Section 19205 continues former Fish and Game Code Section 9001 without
14 substantive change.

15 **§ 19210. Destruction device**

16 19210. (a) A trap shall have at least one destruction device that meets
17 specifications approved by the department.

18 (b) In order to minimize the adverse effects on living marine resources, the
19 specifications for destruction devices shall provide for a device that destructs
20 rapidly enough to facilitate escape of a substantial proportion of all species
21 confined in a trap that cannot be raised.

22 **Comment.** Section 19210 continues former Fish and Game Code Section 9003 without
23 substantive change.

24 **§ 19215. Required maintenance**

25 19215. A trap shall be raised, cleaned, serviced, and emptied at intervals not to
26 exceed 96 hours, weather conditions at sea permitting.

27 **Comment.** Section 19215 continues the first part of former Fish and Game Code Section 9004
28 without substantive change.

29 **§ 19220. Abandonment**

30 19220. No trap shall be abandoned in waters of the state.

31 **Comment.** Section 19220 continues the second part of former Fish and Game Code Section
32 9004 without substantive change.

33 **§ 19225. Marking**

34 19225. A trap or string of traps shall be marked with a buoy.

35 **Comment.** Section 19225 continues former Fish and Game Code Section 9005 without
36 substantive change.

37 **§ 19230. Required marking of trap**

38 19230. Every trap used to take finfish or crustaceans shall be marked with a
39 buoy. Each buoy shall be marked to identify the operator as follows:

1 (a) For a trap used to take lobster the commercial fishing license identification
2 number followed by the letter “P.”

3 (b) For a trap used to take Dungeness crab or hagfish, the commercial fishing
4 license identification number only.

5 (c) For a trap used to take finfish other than sablefish or hagfish, the commercial
6 fishing license identification number followed by the letter “Z.”

7 (d) For a trap used to take sablefish, the commercial fishing license
8 identification number followed by the letter “B.”

9 **Comment.** Section 19230 continues former Fish and Game Code Section 9006 without
10 substantive change.

11 CHAPTER 2. DISTURBANCE OF TRAPS

12 § 19300. Disturbance of trap

13 19300. (a) Except as provided in Sections 19305 and 19310, it is unlawful to
14 willfully or recklessly disturb, move, or damage a trap that belongs to another
15 person and that is marked with a buoy identification number pursuant to Section
16 19230.

17 (b) Subdivision (a) does not apply to employees of the department while
18 engaged in the performance of official duties.

19 **Comment.** Subdivision (a) of Section 19300 continues former Fish and Game Code Section
20 9002(a) without substantive change.

21 Subdivision (b) continues former Fish and Game Code Section 9002(c) without change.

22 § 19305. Permit to pull or raise trap

23 19305. (a) A person, who has been issued a general trap permit under Section
24 19205 and has it in his or her possession, may pull or raise a trap marked with a
25 buoy, if the buoy is marked with a buoy identification number pursuant to
26 subdivision (b) of Section 19230.

27 (b) A person pulling or raising a trap marked with a buoy identification number
28 other than his or her own buoy identification number shall have written permission
29 in his or her possession from the other person who holds the buoy identification
30 number that is marked on the buoy.

31 **Comment.** Section 19305 continues former Fish and Game Code Section 9002(b) without
32 substantive change.

33 § 19310. Publicly employed safety personnel

34 19310. (a) Section 19300 does not apply to publicly employed safety personnel,
35 including, but not limited to, lifeguards, marine safety officers, harbor patrol
36 officers, and peace officers, who, in the performance of their official duties,
37 remove a trap, buoy, or line located in or near breaking surf or adjacent to a public
38 beach if they believe that the trap poses a public safety hazard.

1 (b) A person who removes a trap or an attachment to a trap pursuant to this
2 section that is identified by a buoy identification number is required to do the
3 following:

4 (1) Immediately return any marine life captured in the trap to the ocean.

5 (2) Make an attempt to contact the person whose permit or license number is
6 marked on the buoy, by personal contact, telephone, recorded message left on a
7 telephone answering machine, regular United States Postal Service, or by other
8 means, advising where the property is located.

9 (c) Employees of the department may disclose the name, address, and buoy
10 identification numbers of currently permitted or licensed persons to
11 representatives of public safety agencies described in this section, to assist in the
12 return of traps and attachments to their proper owners or operators.

13 (d) A person who removes a trap or an attachment to a trap pursuant to this
14 section shall have no responsibility to secure the trap or attachment against loss or
15 damage.

16 (e) If the person whose permit or license number is marked on the buoy does not
17 retrieve the trap within seven days of notification pursuant to this section, or if that
18 person cannot be identified within seven days after the trap has been removed, the
19 trap may be discarded.

20 (f) This section does not create a duty on the part of any state or local agency to
21 remove or move a trap, line, or buoy that does not create any liability pursuant to
22 Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the
23 Government Code.

24 **Comment.** Section 19310 continues former Fish and Game Code Section 9002(d) without
25 substantive change.

26 **§ 19315. Regulations relating to retrieval of commercial crab traps**

27 19315. (a) Notwithstanding Sections 19300, 19305, and 19310, the department,
28 in consultation with the Dungeness crab task force, shall develop regulations as
29 necessary to provide for the retrieval of lost or abandoned commercial crab traps.

30 (b)(1) As part of the regulations adopted pursuant to subdivision (a), the
31 department shall establish a retrieval permit program that facilitates the removal of
32 lost or abandoned crab gear in an efficient and cost-effective manner consistent
33 with all of the following:

34 (A) The department shall establish a retrieval permit that grants a person who
35 obtains a retrieval permit the authority to retrieve during the closed season of the
36 Dungeness crab commercial fishery lost or abandoned Dungeness crab traps
37 belonging to another person and to receive compensation for that retrieval on a per
38 trap basis from the revenue generated by the fee established pursuant to
39 subparagraph (B).

40 (B) The department shall establish a fee to be charged to a Dungeness crab
41 vessel permitholder for each trap belonging to the permitholder that is retrieved
42 through the program. The department shall set the fee at a level sufficient to cover

1 the reasonable regulatory costs associated with the program and to provide
2 reasonable compensation to a retrieval permitholder on a per trap basis. The
3 reasonable regulatory costs associated with the program include, but are not
4 limited to, administrative costs, storage costs, and costs associated with disposing
5 unusable traps or traps whose owner cannot be identified.

6 (C) The department may use entities in addition to the department, including,
7 but not limited to, nongovernmental organizations, to help implement the program.

8 (D) A Dungeness crab trap shall not be returned to the owner of the trap until the
9 owner has paid the fee established pursuant to subparagraph (B).

10 (E) The department shall not renew a Dungeness crab vessel permit until any fee
11 imposed pursuant to subparagraph (B) has been paid.

12 (2) The department may adopt additional requirements necessary to implement
13 the program described in this subdivision.

14 (3) The department shall submit the proposed program developed pursuant to
15 this subdivision to the Dungeness crab task force for review, and shall not
16 implement the program until the task force has had 60 days or more to review the
17 proposed program and recommend any proposed changes. The director may
18 implement the program earlier than 60 days after it is submitted to the Dungeness
19 crab task force for review, if recommended by the task force.

20 (c) This section shall become inoperative on April 1, 2019, and, as of January 1,
21 2020, is repealed, unless a later enacted statute, that becomes operative on or
22 before January 1, 2020, deletes or extends the dates on which it becomes
23 inoperative and is repealed.

24 **Comment.** Section 19315 continues former Fish and Game Code Section 9002.5 without
25 substantive change.

26 CHAPTER 3. NUISANCE

27 § 19400. Removal

28 19400. A trap used without a buoy, or with a buoy that is not marked pursuant to
29 Section 19230, is a public nuisance, and shall be removed from waters of the state
30 by any person authorized to enforce this code.

31 **Comment.** Section 19400 continues former Fish and Game Code Section 9007 without
32 substantive change.

33 § 19405. Seizure

34 19405. (a) A trap used in violation of this code, or any regulation adopted
35 pursuant to this code, is a public nuisance, and except as provided in Section
36 19400, shall be seized pursuant to this chapter.

37 (b) It is the duty of every person authorized to make an arrest for a violation of
38 this code governing the use of trap to take fish to seize and keep a trap used to take
39 fish in violation of the code, and report the seizure to the department.

(c) In lieu of a physical seizure pursuant to this section, a person authorized to make an arrest for a violation of any provision of this code may attach to a trap used for taking fish in violation of this code a tag of metal or other material, which shall be furnished by the department for that purpose. The tag shall be impressed or printed with language stating that the trap to which it is attached has been seized by the department as a public nuisance.

(d) Attaching a tag pursuant to subdivision (c) constitutes a seizure within the meaning of this section.

(e) The following acts are misdemeanors:

(1) Removing a tag attached pursuant to subdivision (c), unless authorized by the department.

(2) Using a trap tagged pursuant to subdivision (c) for fishing purposes, unless authorized by the department or by the superior court.

Comment. Subdivision (a) of Section 19405 continues former Fish and Game Code Section 9008 without substantive change.

Subdivision (b) combines and continues the second sentence of the first paragraph of former Fish and Game Code Section 8630 and the second part of former Fish and Game Code Section 9008 without substantive change.

Subdivisions (c)-(e) combine and continue former Fish and Game Code Section 8631 and the second part of former Fish and Game Code Section 9008 without substantive change.

Note. Existing Fish and Game Code Section 9008 provides that a trap used in violation of the existing code “shall be seized pursuant to Article 3 (commencing with Section 8630) of Chapter 3.” The Commission interprets this provision to mean that all sections in that named article, to the event logically applicable to the seizure of a trap, apply to a trap seized pursuant to Section 9008, even though the section does not itself refer to a seized trap.

The Commission invites comment on whether that interpretation of existing Section 9008 is correct, and if so, whether proposed Section 19405(b)-(e), as well as the sections that follow, should be included in this proposed chapter.

§ 19410. Retrieval of trap by department

19410. Within three days after the department has been notified in writing that a vessel carrying a seized trap has arrived in port, the department may remove the trap from the vessel, unless the owner has filed a bond pursuant to Section 19415. The notice shall be sufficient when delivered to the office of the department nearest the port where the vessel arrives.

Comment. Section 19410 combines and continues former Fish and Game Code Section 8632 and the second part of former Fish and Game Code Section 9008 without substantive change.

§ 19415. Filing of bond by owner

19415. (a) When a trap is seized pursuant to this article, the owner or any other person otherwise entitled to possession of the trap may apply to the superior court of the county or city and county in which the seizure was made, or the county or city and county of which the claimant is a resident, for leave to file a bond and regain possession of the trap, during the pendency of any proceeding for forfeiture of the trap.

(b) The bond shall be in an amount determined by the judge to be the actual value of the trap at the time of its release, and shall be conditioned on the transfer of the trap to the custody of the department, if the trap is later ordered forfeited by a judgment of the court.

(c) The bond shall be filed within three days after the seizure of the trap. Upon filing the bond, the person on whose behalf it is given shall be put in possession of the trap, and may use the trap until that is the judgment of the court.

Comment. Section 19415 combines and continues former Fish and Game Code Section 8633 and the second part of former Fish and Game Code Section 9008 without substantive change.

§ 19420. Exceptions to release of trap on bond

19420. Notwithstanding Section 19415, a trap seized pursuant to Section 19405 as illegal because of its size, manner of construction, materials used in its construction, or configuration of its parts is presumed to be contraband, and shall not be returned pending forfeiture, unless it can be and is modified to eliminate the condition of illegality. This subdivision does not apply to a trap seized pursuant to Section 19405 for illegal use.

(b) Notwithstanding subdivision (a), any trap seized pursuant to Section 19405 that is needed for evidence may be held for evidence.

Comment. Section 19420 combines and continues the part of former Fish and Game Code Section 8635 applicable to traps and the second part of former Fish and Game Code Section 9008 without substantive change.

§ 19425. Petition for forfeiture

19425. (a) The department may petition the superior court of the county or city and county in which the seizure is made for a judgment forfeiting the trap.

(b) Upon the filing of the petition, the clerk of the court shall set a time for a hearing, and cause notices to be posted for at least 14 days in advance of the hearing, in at least three public places in the place where the court is held, setting forth the substance of the petition and the time and place of the hearing.

(c) At the hearing, the court shall hear evidence and determine whether the trap was used in violation of this code, and if so shall order the trap forfeited.

Comment. Section 19425 combines and continues the first three sentences of the second paragraph of former Fish and Game Code Section 8630 and the second part of former Fish and Game Code Section 9008 without substantive change.

§ 19430. Disposition of trap

19430. (a) When a trap is seized pursuant to this article and the owner or any other person otherwise entitled to possession of the trap has filed a bond and regained possession of the trap, the person in possession of the trap, if the trap is ordered forfeited pursuant to a judgment of the court, shall deliver the trap to the department by placing in a warehouse or storage designated by the department.

(b) A trap that is ordered forfeited shall be sold or destroyed by the department. The proceeds from those sales shall be paid into the Fish and Game Preservation

1 Fund.

2 **Comment.** Subdivision (a) of Section 19430 combines and continues former Fish and Game
3 Code Section 8634 and the second part of former Fish and Game Code Section 9008 without
4 substantive change.

5 Subdivision (b) combines and continues the fourth and fifth sentences of the second paragraph
6 of former Fish and Game Code Section 8630 and the second part of former Fish and Game Code
7 Section 9008 without substantive change.

8 CHAPTER 4. TRAPPING OF FINFISH

9 § 19500. Criteria for use of trap

10 19500. Finfish, other than sablefish and hagfish, may be taken under a general
11 trap permit if all of the following criteria are also met:

12 (a) Every person aboard the vessel a valid general trap permit that has not been
13 suspended or revoked.

14 (b) If nearshore species are present, at least one person aboard the vessel
15 possesses a valid nearshore fishery permit and a nearshore fishery trap
16 endorsement that has not been suspended or revoked.

17 (c) If deeper nearshore species are present, at least one person aboard the vessel
18 possesses a valid deeper nearshore species fishery permit that has not possesses
19 been suspended or revoked.

20 (d) During the period from one hour after sunset to one hour before sunrise,
21 finfish traps that are left in the water shall be unbaited with the door secured open.
22 If, for reasons beyond the control of the permittee, all trap doors cannot be secured
23 open prior to one hour after sunset, the permittee shall immediately notify the
24 department.

25 (e) Popups shall not be used on buoy lines attached to finfish traps, and shall not
26 be possessed aboard a vessel when taking finfish under a general trap permit.

27 (f) Trap destruction devices used on finfish traps shall conform to the current
28 regulatory requirements for those devices pursuant to Section 19210 and as
29 adopted by the commission.

30 (g) No finfish traps shall be set within 750 feet of any pier, breakwall, or jetty in
31 District 2570, 2575, 2615, 2620, 2625, 2630, 12635, 2640, 2645, or 2650.

32 (h) No more than 50 finfish traps may be used in waters of the state along the
33 mainland shore.

34 (i) The mesh of any finfish trap used pursuant to this section shall measure not
35 less than two inches by two inches.

36 (j) The following fish shall not be used as bait in finfish traps:

37 (1) Lobster.

38 (2) Crabs of the genus cancer, except rock crab, yellow crab, and red crab, as
39 identified in Section 48650, which may be used as bait under the authority of a
40 rock crab trap permit issued pursuant to Section 48650.

41 (3) Any other finfish or invertebrate to which a minimum size limit applies that
42 is used or possessed in a condition so that its size cannot be determined.

Comment. Section 19500 continues former Fish and Game Code Section 9001.7(a)-(j) without substantive change.

Note. Existing Fish and Game Code Section 9001.7(g) (which would be continued by proposed Section 19500(g)) prohibits the setting of finfish traps in described areas in specified existing Fish and Game Districts, including District “20B.” The Commission has found no section in the existing code identifying that district, and proposed Section 19500 would therefore discontinue the reference to it.

The Commission invites comment on whether proposed Section 19500(g) properly continues the intended meaning of existing Section 9001.7(g).

§ 19505. Take of species generally

19505. Except as otherwise prohibited, any species may be taken in a finfish trap.

Comment. Section 19505 continues former Fish and Game Code Section 8403(c) without substantive change.

Note. Proposed Section 19505 is intended to restate existing Fish and Game Code Section 8403(c) to clarify the meaning of that provision, without changing its substantive effect. The existing provision (shown in *italics*) reads as follows:

“8403. (a) To the extent not in conflict with Section 8607, marine species of fin fish which are classified as groundfish may be taken under the regulations of the commission.

(b) Marine species of fin fish, including, but not limited to, fin fish which are classified as groundfish, may be taken with fin fish traps, subject to Article 1 (commencing with Section 9000) of Chapter 4, under regulations of the commission. The regulations may limit the number of fin fish traps which any vessel may use, designate the areas in which the traps may be used, and prescribe other limitations on the use of fin fish traps.

(c) Any other species not otherwise prohibited may be taken in a fin fish trap.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 19510. Marine species

19510. (a) Except as otherwise provided in Section 19515, marine species of finfish, including, but not limited to, finfish that are classified as groundfish, may be taken with finfish traps, subject to other provisions of this code that govern finfish traps, under a general trap permit issued pursuant to Section 19205, and subject to regulations of the commission.

(b) The regulations may limit the number of finfish traps that any vessel may use, designate the areas in which the traps may be used, and prescribe other limitations on the use of finfish traps.

Comment. Subdivision (a) of Section 19510 combines and restates the first sentence of former Fish and Game Code Section 8403(b), and Section 9022(b) without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 8403(b) without substantive change.

Note. Proposed Section 19510(a) is intended to combine and restate the first sentence of existing Fish and Game Code Section 8403(b), and Section 9022(b), to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

1 “8403.....
2 (b) Marine species of fin fish, including, but not limited to, fin fish which are classified as
3 groundfish, may be taken with fin fish traps, subject to Article 1 (commencing with Section 9000)
4 of Chapter 4, under regulations of the commission.

5 9022.....
6 (b) Except as otherwise provided in subdivision (a), all marine species of fin fish subject to
7 Section 8403 may be taken with one or more fin fish traps as prescribed by the commission under
8 a general trap permit issued pursuant to Section 9001.”

9 **The Commission invites comment on whether the combining and restatement of these two**
10 **provisions would cause any substantive change in the meaning of either provision.**

11 **§ 19515. Special rules for Districts 2590, 2595 and 2600**

12 19515. Notwithstanding Section 19200, traps used to take finfish may not be
13 used in Districts 2590, 2595 and 2600, except for baitfish traps as provided in
14 Sections 15105, 19605, and 19610.

15 **Comment.** Section 19515 continues former Fish and Game Code Section 9022(a) without
16 substantive change.

17 CHAPTER 5. BAITFISH TRAPS

18 **§ 19600. Baitfish traps**

19 19600. A freshwater baitfish trap that is used as provided in Section 22125 is not
20 subject to the provisions of this title.

21 **Comment.** Section 19600 continues former Fish and Game Code Section 9000(c) without
22 substantive change.

23 **§ 19605. Fish that may be taken**

24 19605. Subject to Section 15105, California killifish (*Fundulus parvipinnis*),
25 mudsuckers (*Gillichthys mirabilis*), yellowfin gobies (*Acanthogobius flavimanus*),
26 shiner perch (*Cymatogaster aggregata*), and staghorn sculpin (*Leptocottus*
27 *armatus*) may be taken with baitfish traps under a general trap permit issued
28 pursuant to Section 19205.

29 **Comment.** Section 19605 continues former Fish and Game Code Section 9020(a) without
30 substantive change.

31 **§ 19610. Trap size**

32 19610. A baitfish trap shall not exceed 12 inches in width, 12 inches in height,
33 and 36 inches in greatest length with entrance at small ends of funnels or fykes not
34 to exceed 2 inches in diameter.

35 **Comment.** Section 19610 continues former Fish and Game Code Section 9020(b) without
36 substantive change.

TITLE 7. OTHER GEAR

CHAPTER 1. GENERAL PROVISIONS

§ 19800. Slurp guns


19800. Slurp guns may be used to take fish for a commercial purpose in Districts 2570, 2575, 2590, 2615, 2620, 2625, 2640, and 2645.

Comment. Section 19800 continues former Fish and Game Code Section 9052 without substantive change.

§ 19805. Miscellaneous tools

19805. A spade, shovel, hoe, rake, or other appliance operated by hand may be used to take mollusks, sand crabs, and shrimps in Districts 2505, 2515, 2525, 2535, 2540, 2545, 2550, 2555, 2565, 2570, 2575, 2580, 2585, 2590, 2595, 2600, 2605, 2610, 2615, 2620, 2625, 2630, 2640, 2645, and 2650, except as specified in Section 46300, and except that freshwater clams shall not be taken by means of such appliances on any levee or on the berm of any levee.

Comment. Section 19805 continues former Fish and Game Code Section 9050 without substantive change.

 **Note.** Existing Fish and Game Code Section 9050 (which would be continued by proposed Section 19805) contains an exception from its general rule “as specified in Sections 7332 and 8303....” Existing Section 7332 would be continued in the proposed law by proposed Section 46300, but the “Section 8303” seemingly referenced in existing Section 9050, relating to means permitted for taking abalone, was repealed by 1990 Cal. Stat. ch. 1288, and the Commission has not located any provision in the existing code that continues the substance of that former provision.

The Commission invites comment on whether proposed Section 19805, continuing the reference to existing Section 7332 but discontinuing the reference to “Section 8303,” properly continues the intended meaning of existing Section 9050.

§ 19810. Spears, harpoons, bows, and arrows

19810. Spears, harpoons, and bows and arrows may be used for taking all varieties of skates, rays, and sharks, except soupfin sharks.

Comment. Section 19810 continues former Fish and Game Code Section 9051 without substantive change.

CHAPTER 2. DEVELOPMENT OF ALTERNATIVE FISHING GEAR

§ 19900. Issuance of permits

19900. (a) The commission shall encourage the development of new types of commercial fishing gear and new methods of using existing commercial fishing gear by approving permits to be issued by the department, consistent with the policies set forth in **Section 1700** for that development or use, subject to the following restrictions:

1 (1) A permit is subject to those conditions that the commission deems necessary
2 to ensure the proper utilization and protection of the marine resources, and to
3 minimize user group and resource allocation conflicts.

4 (2) A permit is valid for a period of not more than one year, but may be renewed
5 until the Legislature approves or disapproves the permanent use or type of gear
6 pursuant to subdivision (c).

7 (3) A permit shall be revoked if the continued use would have an adverse impact
8 on any resource, allocation of a resource, or other adverse impact to established
9 fisheries.

10 (b) A permit may authorize the use of new types of commercial fishing gear and
11 new methods of using existing gear otherwise prohibited by this code and may
12 authorize that use or the use of existing gear in areas otherwise closed to that use
13 by this code.

14 (c) The commission shall not authorize the issuance of experimental gear
15 permits concerning the use of a gear type in an area, or portion of an area, for
16 more than four consecutive years.

17 (d) The commission shall not authorize the renewal of experimental gear permits
18 originally issued prior to January 1, 1990, but notwithstanding this subdivision and
19 subdivision (c), may extend all experimental gear permits in existence on the
20 effective date of the act that amended this section during the 1991 portion of the
21 1991–92 Regular Session of the Legislature to December 31, 1992, regardless of
22 how many years they have been issued.

23 **Comment.** Section 19900 continues former Fish and Game Code Section 8606 without
24 substantive change.

25 **§ 19905. Revocation or non-renewal of permit**

26 19905. (a) Except as provided in subdivision (c), if an experimental permit
27 issued pursuant to Section 19900 is not renewed, or is revoked or not renewed,
28 pursuant to a judgment, decision of the commission, or legislative enactment, and
29 the permittee has an outstanding loan with the State Coastal Conservancy under
30 former Section 31125 of the Public Resources Code, as added by Chapter 910 of
31 the Statutes of 1986, for the purchase of alternative fishing gear, the unpaid
32 balance of the loan shall be excused from the date of revocation or nonrenewal of
33 the permit, or from the date of any judgment, decision, or enactment that
34 terminates the permit, if the permittee relinquishes the permit and returns the
35 collateral fishing gear to the department, in which case the department shall take
36 possession of the alternative fishing gear for the State Coastal Conservancy.

37 (b) Any alternative gear received by the department due to a revocation,
38 nonrenewal, or termination of an experimental permit may be resold by the State
39 Coastal Conservancy at fair market value to other experimental permit applicants
40 or holders under this chapter. If the permittee chooses to keep the alternative gear
41 and repay the loan, the rate of interest shall be reduced to 3 percent for the
42 remaining balance of the loan.

1 (c) If the Legislature approves the permanent use or type of gear and the
2 commercial fishing permit or the license for the permanent use or type of gear is
3 revoked for a violation of the terms and conditions under which the fishery is
4 conducted, the permittee shall be responsible for any remaining balance on any
5 outstanding loan with the State Coastal Conservancy for the purchase of
6 alternative fishing gear.

7 **Comment.** Section 19905 continues former Fish and Game Code Section 8614 without
8 substantive change.

9 **§ 19910. Request to terminate permit**

10 19910. (a) Within the first six months of operation pursuant to an experimental
11 permit and after a reasonable and concerted effort to utilize a new type of
12 commercial fishing gear, the permittee may request that the experimental permit
13 be terminated, if it is economically infeasible to harvest the target species or if the
14 alternative gear is impractical, inefficient, or ineffective within the fishery or
15 regional area selected. The permittee shall submit copies of all landing receipts, a
16 financial statement setting forth the expenses and any revenue generated by the
17 operation of the alternative fishing gear, and a brief summary from any observers,
18 monitors, and employees regarding the operation of the alternative fishing gear to
19 the department. The department shall review the permittee's submitted material.

20 (b) If the submitted material supports the claim that the new type of commercial
21 fishing gear utilized by the permittee was either inefficient, impractical, or
22 ineffective, or that it was not economically feasible for the permittee to harvest the
23 target species, the department shall terminate the experimental permit and submit
24 its findings to the State Coastal Conservancy. Upon receiving the department's
25 report, the State Coastal Conservancy may terminate the permittee's loan. If the
26 permittee returns the collateral fishing gear to the department, the State Coastal
27 Conservancy shall reimburse the permittee from the loan fund for the principal
28 amount of the loan repaid by the permittee. The department shall take possession
29 of the fishing gear for the State Coastal Conservancy, which may resell the gear as
30 set forth in Section 19905.

31 (c) If the information does not support the claim made by the permittee, the
32 department may still terminate the experimental permit. The State Coastal
33 Conservancy may terminate the remaining balance on the loan if the permittee
34 returns the collateral fishing gear to the department, but the State Coastal
35 Conservancy shall not reimburse the permittee for previous loan payments.

36 (d) After six months of operation pursuant to an experimental permit, any
37 request to terminate the permit for the reasons set forth in subdivision (a) shall
38 include, in addition to the information required by subdivision (a), an explanation
39 of the changed circumstances or reasons that cause the new type of gear to become
40 inefficient, impractical, or ineffective or economically infeasible to harvest the
41 target species after the initial six-month operating period. The department shall
42 review the request and make its recommendation to the State Coastal Conservancy

1 following the procedures set forth in subdivisions (b) and (c). If the department
2 terminates the experimental gear permit, the State Coastal Conservancy may
3 terminate the remaining balance on the loan if the permittee returns the collateral
4 fishing gear to the department, but it shall not reimburse the permittee for any loan
5 payments received. The department shall take possession of the alternative fishing
6 gear for the State Coastal Conservancy, which may resell the gear as set forth in
7 Section 19905.

8 **Comment.** Section 19910 continues former Fish and Game Code Section 8615 without
9 substantive change.

10 TITLE 8. COMMERCIAL TAKE OF FRESHWATER FISH

11 CHAPTER 1. GENERAL PROVISIONS [*RESERVED*]

12 CHAPTER 2. TAKE

13 § 20100. Allowed take

14 20100. (a) The following fresh-water fish may be taken for commercial purposes
15 pursuant to regulations adopted by the commission:

16 (a) Threadfin shad (*Dorosoma petenense*).

17 (b) Species of the following families:

18 (1) Carp or minnow (*Cyprinidae*).

19 (2) Cichlid (*Cichlidae*).

20 (3) Goby (*Gobiidae*).

21 (4) Killifish (*Cyprinodontidae*).

22 (5) Lamprey (*Petromyzontidae*).

23 (6) Livebearer (*Peociliidae*).

24 (7) Mullet (*Mudilidae*).

25 (8) Sculpin (*Cottidae*).

26 (8) Silverside (*Antherinidae*).

27 (9) Smelt (*Osmeridae*).

28 (10) Stickleback (*Casterosteidae*).

29 (11) Sucker (*Catostomidae*).

30 (b) The commission may authorize the use of commercial fishing gear and
31 fishing methods to take any fish listed in this section, in those areas of the state
32 otherwise closed to that use pursuant to this code.

33 **Comment.** Subdivision (a) of Section 20100 continues former Fish and Game Code Section
34 8437 without change.

35 Subdivision (b) continues former Fish and Game Code Section 8437.1 without substantive
36 change.

37 § 20105. Centrarchidae

38 20105. Except as provided in subdivision (b), fish of the family Centrarchidae

(Sacramento perch, crappie, black bass, and sunfish) shall not be taken or possessed for a commercial purpose, sold, or purchased, other than fish that are cultured pursuant to Part 1 (commencing with Section 23305) of Division 7.

(b) Notwithstanding subdivision (a), the commission shall adopt regulations which authorize the importation and sale of dead fish of the family Centrarchidae if the fish have been lawfully taken outside of California, they have been taken in another state or foreign country that permits their sale, and they are brought into California with a bill of lading or similar accountable documentation specifying the origin of the fish.

Comment. Subdivision (a) of Section 20105 continues former Fish and Game Code Section 8436 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8436.5 without substantive change.

TITLE 9. FISH-RELATED BUSINESSES

CHAPTER 1. GENERAL PROVISIONS

Article 1. Licensing Generally

§ 20200. Activity requiring license

20200. Notwithstanding any other provision in this title, the following activities do not require a license pursuant to this title:

(a) The sale of fish by a commercial fisherman to a fish receiver.

(b) The take, transport, or sale of live fresh-water fish for bait by a live fresh-water bait fish dealer.

(c) The sale of fish or an aquaculture product at retail to the ultimate consumer.

(d) Dealing in aquaculture products governed by Part 1 (commencing with Section 23305) of Division 7.

(e) Dealing with nonnative live products utilized solely for pet industry or hobby purposes and not human consumption.

(f) The unloading of fish or fish products from a commercial fishing boat at a dock, by a person employed by a fish receiver.

(g) The purchase, sale, take, or receipt of live marine fish for use as live bait, which are not brought ashore.

(h) Acting as an agent for another person in negotiating the purchase or sale of fish, in return for a fee, commission, or other compensation.

Comment. Section 20200 restates former Fish and Game Code Section 8030 without substantive change.

Notes. (1) Proposed Section 20200 is intended to restate existing Fish and Game Code Section 8030 to clarify the meaning of that section, without changing the section's substantive meaning. The existing section reads as follows:

“8030. Any person who engages in any business for profit involving fish shall be licensed pursuant to this article, except as follows:

(a) A commercial fisherman who sells fish only to persons licensed under this article to purchase or receive fish from commercial fishermen and who does not engage in any activity described in Section 8034, 8035, or 8036 unless licensed to engage in both activities.

(b) A person licensed pursuant to Section 8460 who only takes, transports, or sells live freshwater fish for bait.

(c) A person who sells fish or aquaculture products only at retail to the ultimate consumer if that person does not conduct any activities described in Section 8033, 8035, or 8036.

(d) Pursuant to Division 12 (commencing with Section 15000), a person who deals only in products of aquaculture.

(e) A person who deals only with nonnative live products that are not utilized for human consumption but that are utilized solely for pet industry or hobby purposes and who does not engage in the activities described in Section 8033.1.

(f) A person who is employed by the fish receiver to unload fish or fish products from a commercial fishing boat at a dock.

(g) A person who purchases, sells, takes, or receives live marine fish for use as live bait, that are not brought ashore, and who does not engage in any activity described in Section 8033, 8033.1, 8034, 8035, or 8036.

(h) A person who does not purchase or obtain fish, but who acts as an agent for others while negotiating purchases, or sales of fish in return for a fee, commission, or other compensation.”

The Commission is concerned that the existing language is potentially problematic, in two respects.

First, the section mandates that a person engaging in any business for profit “involving fish,” other than the persons expressly exempted by the section, must obtain a license pursuant to the article in which Section 8030 appears. However, there are likely businesses “involving fish” that are not included in the list of exemptions, and for which the referenced article does not offer a license.

Second, the scope of the existing exceptions seems too restrictive. Read literally, the exceptions are inapplicable to persons who engage in more than one kind of fish business.

For example, Section 8030(b) provides that “[a]NY person who engages in any business for profit involving fish shall be licensed pursuant to this article, except ... [a] person licensed pursuant to Section 8460 who *only* takes, transports, or sells live freshwater fish for bait.”

The last part of that provision was probably intended to make clear that an exemption from licensure for one kind of activity (e.g., selling live freshwater fish as bait) does not exempt a person from any other applicable licensure requirements. Thus, if a person operates both a freshwater fish bait shop *and* a fish wholesaling business, the operation of the bait shop does not excuse the person from the requirement to obtain a fish wholesaler’s license.

However, read literally, the restriction seems to go too far. If our hypothetical bait shop operator also operates a licensed fish wholesaler business, the operation of the second business would seem to take the person out of the exemption entirely. In other words, the live bait exemption only applies to persons who do not engage in other types of fish businesses.

The Commission sees no policy reason for such a restriction. It seems inadvertent.

If so, the problem could be avoided by recasting the exemptions to apply to specified *activities*, rather than to *persons* who engage in those activities. Thus, an exemption from licensure for the *activity* of operating a bait shop would have no effect on the licensure requirements that govern other activities (e.g., wholesaling). Proposed Section 20200 takes that drafting approach.

The Commission invites comment on whether proposed Section 20200 accurately continues the intended meaning of existing Section 8030.

(2) As a general proposition, except where there exists clear legislative intent to achieve a different result, the proposed law would replace references to the term “licensed commercial fisherman” with the term “commercial fisherman,” which is defined as a person “engaging in an activity for which a commercial fishing license is *required*.... (regardless of whether the person *had* a valid license). See proposed Section 280 (“commercial fisherman”) and Note following. As expressed in that Note, the rationale for that revision is the Commission’s belief that the

Legislature intended that laws regulating commercial fishing should apply to anyone *engaged* in the regulated activity, regardless of whether the person held a valid *license* to do so.

This rationale applies equally to persons involved in other regulated commercial fishing businesses, and so throughout this part of the proposed law the Commission has proposed similar revisions of references to licensed fish receivers, wholesalers, etc. In general, these revisions take the form of replacing references to “licensed” fish receivers, wholesalers, etc. with newly proposed provisions that define a person engaged in a regulated commercial fish business as “a person engaging in an activity for which a [specified] license is required,” pursuant to an identified section in this title. See proposed Sections 300 (“commercial passenger fishing boat owner”), 385 (“fish importer”), 390 (“fish processor”), 395 (“fish receiver”), 400 (“fish retailer”), 405 (“fish wholesaler”), 515 (“marine aquaria receiver”).

The Commission invites comment on whether these revisions would be problematic.

§ 20205. Types of licenses

20205. (a) A multi-function commercial fish business license shall be issued that authorizes any or all activities described in Section 20350, 20400, 20450, or 20550.

(b) A specialty fish business license that authorizes some but not all, activities described in subdivision (b), shall be issued in five classes, as follows:

(1) A fish importer’s license, as provided in Section 20350.

(2) A fish processor’s license, as provided in Section 20400.

(3) A fish receiver’s license, as provided in Section 20450.

(4) A fish wholesaler’s license, as provided in Section 20550.

(5) A marine aquaria receiver’s license, as provided in Section 20600.

Comment. Subdivision (a) of Section 20205 continues the first sentence of former Fish and Game Code Section 8032(a) without substantive change.

Subdivision (b) restates former Fish and Game Code Section 8032(b) without substantive change.

Notes. (1) Proposed Section 20205(a) would identify the “commercial fish business license” referenced in the first sentence of existing Fish and Game Code Section 8032(a) as a “multi-function commercial fish business license,” using the nomenclature assigned to that license by the Department of Fish and Wildlife.

The Commission invites comment on whether this renaming of the referenced license in Section 8032(a) would be problematic.

(2) Existing Section 8032(a) does not include among the activities authorized by a multi-function license the activities requiring a marine aquaria receiver’s license pursuant to existing Section 8033.1. This omission appears arguably in conflict with the language of Section 8032(b), which provides for issuance of specialty licenses “for part of, but not all, activities described in subdivision (a)” that includes a marine aquaria receiver’s license.

The omission also appears to conflict with existing Section 8037(a), which provides (with emphasis added) that “A person who engages in business involving fish which business activity would require more than one class of license *under this article* [an article that includes a provision authorizing a marine aquaria receiver’s license] shall obtain *either* a commercial fish business license issued under subdivision (a) of Section 8032 or each of the specialty licenses which are required....”

The exclusion of marine aquaria receiver activity from the activity authorized by a multi-function license would also appear to mean that a business that receives both marine aquaria organisms as well as other fish is required in all cases to obtain two licenses.

The Commission invites comment on whether activity requiring a marine aquaria receiver's license is intended to be authorized, or in practice is authorized, by a multi-function commercial fish business license.

(3) Neither existing Section 8032(a) nor existing Section 8032(b) reference activity requiring a fish retailer's license, pursuant to existing Section 8033.5. The omission from Section 8032(a) would again appear to mean that a person who engages both in activity requiring a fish retailer's license as well as activity requiring one or more other specialty licenses would in all cases have to obtain two licenses.

In addition, the Commission is uncertain why a fish retailer's license under existing Section 8033.5 is not listed in Section 8032(b) as a specialty fish business license, and suggests its omission could create confusion in light of references elsewhere in the code to persons who have or who are required to have a fish business license generally.

In addition this omission also appears to conflict with existing Section 8037(a), which again appears to authorize a person engaging in multiple activity requiring *any* of the licenses authorized under the article in which Section 8037(a) appears — which includes a fish retailer's license — to obtain a single multi-function license that authorizes all such activity.

The Commission invites comment on whether the omission from existing Section 8032(a) of activity requiring a fish retailer's license, and the omission from existing Section 8032(b) of a reference to that license, is intended.

(4) Proposed Section 20205(b) is intended to restate existing Fish and Game Code Section 8032(b) to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“(b) Specialty licenses for part of, but not all, activities described in subdivision (a) shall be issued in five classes, as follows:

(1) Fish receiver's license, issued to any person engaged in the business of receiving fish as provided in Section 8033.

(2) Marine aquaria receiver's license, issued to any person engaged in the business of receiving live marine species indigenous to California waters from a person required to be a licensed commercial fisherman for the purpose of wholesaling or retailing those species for pet industry or hobby purposes as provided in Section 8033.1.

(3) Fish processor's license, issued to any person engaged in the business of processing fish as provided in Section 8034.

(4) Fish wholesaler's license, issued to any person who is engaged in the business of wholesaling fish as provided in Section 8035.

(5) Fish importer's license, issued to any person who is engaged in the business of importing fish as provided in Section 8036.”

The proposed revisions to the five numbered paragraphs would delete what appear intended as shorthand descriptions of the provisions of the cross-referenced sections within those paragraphs. The deletions are proposed to eliminate any possible inconsistency between these shorthand descriptions and the substantive provisions of the cross-referenced sections.

The Commission invites comment on whether proposed Section 20205(b) accurately continues the intended substantive meaning of existing Section 8032(b).

§ 20210. Conditions of license

20210. Unless otherwise specified, all of the following conditions apply to each commercial fish business license, permit, or other entitlement issued pursuant to this title:

(a) An application for a commercial fish business license, permit, or other entitlement shall be made on a form containing information as required by the department.

(b) A commercial fish business license shall be signed by the holder before use.

(c) A person who has had a commercial fish business license suspended or revoked shall not engage in that business activity, and shall not receive any other commercial fish business license, permit, or other entitlement that authorizes engaging in that business activity, while the suspension or revocation is in effect.

(d) A commercial fish business license, permit, or other entitlement is not transferable, unless otherwise expressly specified in this code.

(e) Any person required to hold a commercial fish business license, permit, or other entitlement, who moves or acquires a new or additional plant, facility, or other place of business for profit involving fish, shall notify the department of the address within three months of commencing business activities at the address.

(f) Each plant, facility, or other place of business in which an activity occurs that is required to be licensed under this title shall have a copy of each required license on display and available for inspection at any time by the department.

(g) Any person required to be licensed pursuant to this title shall provide the department, at the time of application, with the business name, business address, and business telephone number for all locations doing business under the authority of the person's commercial fish business license, permit, or entitlement.

(h) Any person required to be licensed pursuant to this title who is subject to landing taxes as defined in Section 20950, and has failed to pay all landing taxes and penalties pursuant to Section 21350, shall not be allowed to renew or obtain that commercial fish business license, permit, or entitlement, until payment is made in full to the department.

(i) Any person licensed pursuant to this title who is subject to landing taxes as defined in Section 20950, and fails to submit landing receipts pursuant to Section 21150), may be subject to suspension or revocation of that commercial fish business license, permit, or entitlement.

Comment. Section 20210 continues former Fish and Game Code Section 8032.5(a), (b), and (d)-(i) without substantive change.

Note. Existing Fish and Game Code Section 8032.5(h) (which would be continued by proposed Section 20210(h)) provides that a person "licensed" to engage in a fish related business who has not paid landing tax owed shall not be allowed to renew that license until they pay the owed tax in full. Consistent with the rationale generally implemented throughout this part relating to equivalent regulation of both licensed and *unlicensed* commercial fish activity, proposed Section 20210(h) would provide that a person *required to be* licensed pursuant to this title who owed landing tax may neither renew *nor obtain* that license, until the tax was paid.

The Commission invites comment on the appropriateness of this revision.

§ 20215. Term of license

20215. A license issued under this title is valid from January 1 to December 31, inclusive, or, if issued after the beginning of that term, for the remainder of that term.

Comment. Section 20215 continues former Fish and Game Code Section 8038 without substantive change.

1 **§ 20220. License on premises of business**

2 20220. Each plant, facility, or other place of business in which an activity occurs
3 that is required to be licensed pursuant to this title shall have a copy of the
4 required license on the premises.

5 **Comment.** Section 20220 continues the second sentence of former Fish and Game Code
6 Section 8037(a) without substantive change.

7 **Note.** Proposed Section 20220 would continue the second sentence of existing Fish and Game
8 Code Section 8037(a).

9 Section 8037(a) in its entirety reads as follows (with the second sentence italicized):

10 “A person who engages in business involving fish which business activity would require more
11 than one class of license under this article shall obtain either a commercial fish business license
12 issued under subdivision (a) of Section 8032 or each of the specialty licenses which are required
13 for the classes of activities engaged in. *Each plant, facility, or other place of business in which an*
14 *activity occurs that is required to be licensed shall have a copy of the required license.*”

15 **The Commission invites comment on whether proposed Section 20220 correctly continues**
16 **the intended application of the second sentence of existing Section 8037(a).**

17 **§ 20225. Possession and display of identification**

18 20225. (a) At all times when engaged in any activity for which a commercial
19 fishing license is required, or in any activity described in this title for which a
20 commercial fish business license is required, the person engaged in that activity
21 shall have in his or her possession, or immediately available to the person, a valid
22 driver’s license or identification card issued to him or her by the Department of
23 Motor Vehicles, or by the entity issuing driver’s licenses from the person’s state of
24 domicile.

25 (b) The driver’s license or identification card shall be exhibited upon demand to
26 any person authorized by the department to enforce this code, or regulations
27 adopted pursuant to this code.

28 **Comment.** Section 20225 continues the part of former Fish and Game Code Section 7852.27
29 applicable to fishing business licenses without substantive change.

30 **Note.** Existing Fish and Game Code Section 7852.27 (which, as applicable to fish business
31 licenses would be continued by proposed Section 20225), in requiring a license to have in
32 possession at all times a valid driver’s license or identification card, appears to limit “persons”
33 who may receive a fish business license to only natural persons. Given that existing Section 67
34 defines “person” as including a partnership, corporation, limited liability company, trust, or other
35 type of association, is it the intent of this provision to foreclose any of these listed entities from
36 being issued a fish business license in the name of the entity?

37 **The Commission invites comment on this issue.**

38 **§ 20230. Fee for multi-function fish business license**

39 20230. (a) The annual fee for a multi-function commercial fish business license
40 is one thousand three hundred seventy-three dollars (\$1,373).

41 (b) The commission shall adjust the amount of the fee specified in subdivision
42 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
43 and implementation costs of the department and the commission relating to those

1 licenses.

2 (c) The fee specified in this section is applicable to the 2004 license year, and
3 shall be adjusted annually thereafter pursuant to Section 3755.

4 **Comment.** Subdivision (a) of Section 20230 continues a part of former Fish and Game Code
5 Section 8032(a) without substantive change.

6 Subdivision (b) continues former Fish and Game Code Section 8032(c) without substantive
7 change.

8 Subdivision (c) continues the part of former Fish and Game Code Section 8039 applicable to
9 multi-function commercial fish business licenses without substantive change.

10 **§ 20235. Suspension of license**

11 20235. The commission, after notice and opportunity for hearing, may suspend,
12 revoke, or cancel a commercial fish business license, permit, or other entitlement,
13 for a period of time to be determined by the commission, for any of the following
14 reasons:

15 (a) The person was not lawfully entitled to be issued the license, permit, or other
16 entitlement.

17 (b) Any violation of this code, the regulations adopted pursuant to this code, or
18 the terms of the permit or other entitlement by the licensee, permittee, person
19 holding the entitlement, or his or her agent, servant, employee, or person acting
20 under the licensee's, permittee's, or entitled person's direction or control.

21 (c) Any violation of any federal law relating to the fishery for which the license,
22 permit, or other entitlement was issued by the licensee, permittee, person holding
23 the entitlement, or his or her agent, servant, employee, or person acting under the
24 licensee's, permittee's, or entitled person's direction or control.

25 **Comment.** Section 20235 continues former Fish and Game Code Section 8032.5(c) without
26 substantive change.

27 **§ 20240. Suspension based on specified convictions**

28 20240. In addition to any other penalty prescribed in this code, a license issued
29 pursuant to Chapter 2 of this title to a person who is convicted of a violation of
30 Section 13600, 13605, 13915, 39105, 39555, or 43150 shall be suspended for not
31 less than seven days nor more than 30 days. Each day a fish of the species
32 designated in any of those sections is unlawfully possessed and each unlawful
33 transaction involving the purchase or sale of a fish of those species by a wholesale
34 fish dealer is a separate violation.

35 **Comment.** Section 20240 continues former Fish and Game Code Section 12002.9 without
36 substantive change.

CHAPTER 2. SPECIALTY LICENSES

Article 1. General Provisions

§ 20300. Licensing for persons engaged in multiple businesses

20300. A person who engages in activity that requires more than one class of license under this chapter shall obtain either a multi-function commercial fish business license pursuant to subdivision (a) of Section 20205, or shall obtain each specialty license required for each activity engaged in, as provided in this chapter.

Comment. Section 20300 continues the first sentence of former Fish and Game Code Section 8037(a) without substantive change.

Note. As discussed in more detail in a Note following proposed Section 20205, there may be a conflict between the first sentence of existing Section 8037(a) (which would be continued by proposed Section 20300), and existing Section 8032 (which would be continued by proposed Section 20205), with regard to activity requiring either a marine aquaria receiver's license pursuant to Section 8033.1, or a fish retailer's license pursuant to existing Section 8033.5.

The Commission invites comment on this issue.

Article 2. Fish Importer

§ 20350. Required license

20350. The purchase or receipt, for purpose of resale to other than the ultimate consumer, of fish that were taken outside this state, and brought into this state by a person other than a commercial fisherman, requires a fish importer's license.

Comment. Section 20350 restates the first sentence of former Fish and Game Code Section 8036(a) without substantive change.

Notes. (1) Proposed Section 20350 is intended to restate the first sentence of existing Fish and Game Code Section 8036(a) to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“Any person who purchases or receives fish that are taken outside of this state and brought into this state by a person who is not a licensed commercial fisherman, for the purpose of resale to other than the ultimate consumer, shall obtain a fish importer's license.”

Consistent with the proposed revision of existing Section 8030, which specifies exemptions from fish business licensing, proposed Section 20350 would revise existing Section 8036(a) to specify the *activities* that require a fish importer's license, rather than the *persons* that must be licensed. **This same type of revision is proposed for all other licensing provisions throughout this title.**

The Commission invites comment on whether proposed Section 20350 accurately continues the intended meaning of the first sentence of existing Section 8036(a).

(2) Existing Fish and Game Code Section 8036(b), which provides that a person who engages in activity requiring both a fish importer's license and a fish wholesaler's license must obtain both of those licenses, appears superfluous in light of existing Section 8037(a) (which would be continued by proposed Section 20300), and would not be continued in the proposed law.

The Commission invites comment, in light of the continuation of existing Section 8037 in the proposed law, on whether it is problematic to discontinue existing Section 8036(b).

1 **§ 20355. Fee**

2 20355. (a) The annual fee for a fish importer's license is five hundred forty-nine
3 dollars (\$549).

4 (b) The fee specified in this section is applicable to the 2004 license year, and
5 shall be adjusted annually thereafter pursuant to Section 3755.

6 **Comment.** Subdivision (a) of Section 20355 continues the second sentence of former Fish and
7 Game Code Section 8036(a) without change.

8 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
9 the fee for a fish importer's license, without substantive change.

10 Article 3. Fish Processor

11 **§ 20400. Required license**

12 20400. (a) Except as provided in subdivision (b), engaging in any of the
13 following activities for profit requires a fish processor's license:

14 (1) Preserving or preparing fish for sale or delivery to other than the ultimate
15 consumer, including, but not limited to, cleaning, cutting, gutting, scaling,
16 shucking, peeling, cooking, curing, salting, canning, breeding, packaging, or
17 packing fish.

18 (2) Manufacturing fish scraps, fish meal, fish oil, or fertilizer made from fish.

19 (b) Subdivision (a) does not apply to cleaning, beheading, gutting, or chilling
20 fish by a commercial fisherman that is required to preserve the fish while aboard a
21 fishing vessel, and prevent deterioration, spoilage, or waste of the fish before they
22 are landed and delivered to a fish receiver.

23 **Comment.** Subdivision (a) of Section 20400 combines and restates and the first two sentences
24 of former Fish and Game Code Section 8031(a)(1) and the first sentence of former Fish and
25 Game Code Section 8034(a) without substantive change.

26 Subdivision (b) restates the third sentence of former Fish and Game Code Section 8031(a)(1)
27 without substantive change.

28 **Notes.** (1) Proposed Section 20400(a) is intended to combine and restate the first sentence
29 of former Fish and Game Code Section 8034(a) and the first two sentences of former Fish and
30 Game Code Section 8031(a)(1), to clarify the meaning of those provisions without changing their
31 substantive effect. Proposed Section 20400(b) is intended to restate the third sentence of former
32 Fish and Game Code Section 8031(a)(1) to clarify the meaning of that provision without
33 changing its substantive effect.

34 The provisions that would be restated read as follows:

35 “8031. (a)(1) “Process fish” means any activity for profit of preserving or preparing fish for
36 sale or delivery to other than the ultimate consumer, including, but not limited to, cleaning,
37 cutting, gutting, scaling, shucking, peeling, cooking, curing, salting, canning, breeding,
38 packaging, or packing fish. “Process fish” also means the activity for profit of manufacturing fish
39 scraps, fish meal, fish oil, or fertilizer made from fish. “Process fish” does not include the
40 cleaning, beheading, gutting, or chilling of fish by a licensed commercial fisherman which is
41 required to preserve the fish while aboard a fishing vessel and which is to prevent deterioration,
42 spoilage, or waste of the fish before they are landed and delivered to a person licensed to
43 purchase or receive fish from a commercial fisherman.”

44 “8034. (a) Any person who processes fish for profit shall obtain a fish processor's license.”

The Commission invites comment on whether the restatement of these provisions in proposed Section 14300 would cause any substantive change in the meaning of any provision.

(2) Existing Fish and Game Code Section 8034(b), which provides that a person who engages in activity requiring both a fish processor's license and a fish receiver's license must obtain both of those licenses (or a multi-function license), appears superfluous in light of existing Section 8037(a) (which would be continued by proposed Section 20300), and would not be continued in the proposed law.

The Commission invites comment, in light of the continuation of existing Section 8037 in the proposed law, on whether it is problematic to discontinue existing Section 8034(b).

§ 20405. Fee

20405. (a) The annual fee for a fish processor's license is five hundred forty-nine dollars (\$549).

(b) The fee specified in this section is applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 3755.

Comment. Subdivision (a) of Section 20405 continues the second sentence of former Fish and Game Code Section 8034(a) without change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish processor's license, without substantive change.

Article 4. Fish Receiver

§ 20450. Required license

20450. (a) Except as provided in subdivision (b), engaging in any of the following activities requires a fish receiver's license:

(1) Purchasing or receiving fish for a commercial purpose from a commercial fisherman.

(2) Removing fish from the point of first landing that the person has taken, for a commercial purpose.

(b) Subdivision (a) does not apply to the following activities:

(1) An activity requiring licensing as a marine aquaria receiver.

(2) An activity requiring licensing as a fish retailer.

(3) Transporting fish from the point of first landing to a fish receiver under a transportation receipt completed pursuant to Chapter 4 (commencing with Section 21200) of Title 10.

Comment. Section 20450 combines and restates former Fish and Game Code Sections 8033(a) and 8047(c)(4) without substantive change.

Note. Proposed Section 20450 is intended to combine and restate existing Fish and Game Code Sections 8033(a) and 8047(c)(4) to clarify the meaning of those provisions, without changing their substantive meaning. The existing provisions read as follows:

“8033. (a) Except as provided in Section 8033.1 or 8033.5, or subdivision (c) of Section 8047, any person who purchases or receives fish for commercial purposes from a fisherman who is required to be licensed under Section 7850, or any person who removes fish from the point of the first landing that the person has caught for his or her own processing or sale, shall obtain a fish receiver's license.”

“8047. (c)(4) A person transporting fish from the point of first landing under a transportation receipt is not required to be licensed to conduct the activities of a fish receiver as described in Section 8033.”

The Commission invites comment on whether proposed Section 20450 accurately continues the intended meaning of existing Sections 8033(a) and 8047(c)(4).

§ 20455. License fee

20455. (a) The annual fee for a fish receiver’s license is five hundred forty-nine dollars (\$549).

(b) The fee specified in this section applies to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 3755.

Comment. Subdivision (a) of Section 20455 continues former Fish and Game Code Section 8033(b) without change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish receiver’s license, without substantive change.

§ 20460. Cooperative association

20460. A cooperative association of fishers may be licensed as fish receivers.

Comment. Section 20460 continues former Fish and Game Code Section 8033(c) without change.

Article 5. Fish Retailer

§ 20500. Required license

20500. The sale by a commercial fisherman, for other than marine aquaria pet trade or research purposes, of fish that the commercial fisherman has taken, to the ultimate consumer of that fish, requires a fish retailer’s license.

Comment. Section 20500 restates the first sentence of former Fish and Game Code Section 8033.5(a).

Notes. (1) Proposed Section 20500 is intended to restate existing Fish and Game Code Section 8033.5(a) to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“Any commercial fisherman who sells fish for other than marine aquaria pet trade or research purposes that he or she has taken to the ultimate consumer of that fish shall obtain a fisherman’s retail license.”

The Commission invites comment on whether proposed Section 20500 accurately continues the intended meaning of the first sentence of existing Section 8033.5(a).

(2) Existing Fish and Game Code Section 8033.5(b), which provides that a person who engages in activity that requires both a fish retailer’s license and one or more other commercial fish business licenses must obtain all appropriate licensing, appears superfluous in light of existing Section 8037(a) (which would be continued by proposed Section 20300), and would not be continued in the proposed law.

The Commission invites comment, in light of the continuation of existing Section 8037 in the proposed law, on whether it is problematic to discontinue existing Section 8033.5(b).

1 **§ 20505. Fee**

2 20505. (a) The annual fee for a fish retailer's license is sixty-nine dollars (\$69).

3 (b) The fee specified in this section is applicable to the 2004 license year, and
4 shall be adjusted annually thereafter pursuant to Section 3755.

5 **Comment.** Subdivision (a) of Section 20505 continues the second sentence of former Fish and
6 Game Code Section 8033.5(a) without substantive change.

7 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
8 the fee for a fish retailer's license without substantive change.

9 Article 6. Fish Wholesaler

10 **§ 20550. Required license**

11 20550. (a) Except as provided in subdivision (b), the purchase or receipt of fish,
12 for the purpose of resale to other than the ultimate consumer, from a fish receiver,
13 fish processor, fish importer, or fish wholesaler, requires a fish wholesaler's
14 license.

15 (b) Subdivision (a) does not apply to an activity requiring either of the following
16 licenses:

17 (1) A marine aquaria receiver's license.

18 (2) A fish importer's license.

19 **Comment.** Subdivision (a) of Section 20550 restates former Fish and Game Code Section
20 8035(a) without substantive change.

21 Subdivision (b) restates former Fish and Game Code Section 8035(c) without substantive
22 change.

23 **Notes.** (1) Proposed Section 20550(a) is intended to restate existing Fish and Game Code
24 Section 8035(a) to clarify the meaning of that provision, without changing its substantive
25 meaning. The existing provision reads as follows:

26 “(a) Except for a person exempt under Section 8030, any person who, for the purpose of resale
27 to other than the ultimate consumer, purchases or obtains fish from another person, who is
28 required to be licensed as a fish receiver, fish processor, fish importer, or fish wholesaler under
29 this article, shall obtain a fish wholesaler's license.”

30 **The Commission invites comment on whether proposed Section 20550(a) accurately**
31 **continues the intended meaning of existing Section 8035(a).**

32 (2) Proposed Section 20550(b) is intended to restate existing Fish and Game Code Section
33 8035(c) to clarify the meaning of that provision, without changing its substantive meaning. The
34 existing provision reads as follows:

35 “(c) This section does not apply to either of the following:

36 (1) Persons required to have a marine aquaria receiver's license pursuant to Section 8033.1.

37 (2) Persons licensed pursuant to Section 8036 who only purchase or obtain fish from outside
38 this state.”

39 **The Commission invites comment on whether proposed Section 20550(b) accurately**
40 **continues the intended meaning of existing Section 8035(c).**

41 **§ 20555. Fee**

42 20555. (a) The annual fee for a fish wholesaler's license is three hundred
43 seventy-one dollars (\$371).

(b) The fee specified in this section is applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 3755.

Comment. Subdivision (a) of Section 20555 continues former Fish and Game Code Section 8035(b) without change.

Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to the fee for a fish wholesaler's license, without substantive change.

Article 7. Marine Aquaria Receiver

§ 20600. Required license

20600. Engaging in any of the following activities involving species identified in Section 20710 requires a marine aquaria receiver's license:

(a) The take and sale to the ultimate consumer of a live marine organism indigenous to California by a marine aquaria collector.

(b) The purchase or receipt of live marine species indigenous to California, for a commercial purpose, from either of the following persons:

(1) A commercial fisherman who is a marine aquaria collector.

(2) A person who imports from species indigenous to California waters from a neighboring state.

Comment. Section 20600 restates former Fish and Game Code Section 8033.1(a) without substantive change.

Notes. (1) Proposed Section 20600(a) is intended to restate existing Fish and Game Code Section 8033.1(a) to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“(a) Any person engaged in any of the following activities involving species identified in subdivision (b) of Section 8597 shall obtain a nontransferable marine aquaria receiver's license:

(1) A person who is required to have a marine aquaria collector's permit pursuant to Section 8597 who sells live marine organisms indigenous to California, that the person has taken, to the ultimate consumer.

(2) A person who purchases or receives live marine species indigenous to California for commercial purposes from any of the following:

(A) A fisherman who is required to have a marine aquaria collector's permit pursuant to subdivision (a) of Section 8597.

(B) A person who imports from neighboring states species that are also indigenous to California waters.

(b) A person required to be licensed as a marine aquaria receiver shall obtain all live marine organisms indigenous to California waters only from fishermen, aquaculturists, or importers holding current and appropriate licenses or permits.”

The reference to a “nontransferable” marine aquaria receiver's license in existing Section 8033.1(a) is discontinued as superfluous. See existing Section 8032.5(d) (which would be continued by proposed Section 20210(d)).

The Commission invites comment on whether proposed Section 20600 accurately continues the intended meaning of existing Section 8033.

(2) Existing Fish and Game Code Section 8031(a)(3) defines the term “import,” for purposes of the provisions of this article, as “receiving or purchasing fish taken outside of this state which are not landed in this state by a licensed commercial fisherman.” However, the word “import” is used as a verb only once in the article in which Section 8031(a)(3) appears, in Section 8033.1(a)(2)(B) (which would be continued by proposed Section 20600(b)(2)), and there are elements of the

1 definition that appear either superfluous to or inconsistent with the intended meaning of Section
2 8033.1. For example, while the definition refers to fish taken anywhere outside this state, Section
3 8033.1 refers to fish taken from a “neighboring” state. Further, the definition excludes from its
4 scope fish landed in this state by a commercial fisherman, whereas Section 8033.1 does not
5 expressly mention that exclusion.

6 **The Commission invites comment on whether the word “import” as used in existing**
7 **Section 8033.1(a)(2)(B) should be continued as is in proposed Section 20600(b)(2) and the**
8 **definition of that term in Section 8031(a)(3) discontinued in the proposed law, or whether**
9 **the definition in Section 8031(a)(3) should be incorporated in proposed Section 20600(b)(2).**

10 **§ 20605. License fee**

11 20605. (a) The annual fee for a marine aquaria receiver’s license is one thousand
12 three hundred seventy-three dollars (\$1,373).

13 (b) The fee specified in this section is applicable to the 2004 license year, and
14 shall be adjusted annually thereafter pursuant to Section 3755.

15 **Comment.** Subdivision (a) of Section 20605 continues former Fish and Game Code Section
16 8033.2 without substantive change.

17 Subdivision (b) continues the part of former Fish and Game Code Section 8039 applicable to
18 the fee for a marine aquaria receiver’s license, without substantive change.

19 **§ 20610. Source of indigenous organisms**

20 20610. A marine aquaria receiver shall obtain all live marine organisms
21 indigenous to California waters only from commercial fishers, fish importers, or
22 aquaculturists, who hold current and appropriate licenses or permits.

23 **Comment.** Section 20610 continues former Fish and Game Code Section 8033.1(b) without
24 substantive change.

25 **CHAPTER 3. MARINE AQUARIA PET TRADE**

26 **§ 20700. Definitions**

27 20700. The following definitions govern the construction of this chapter:

28 (a) “Marine aquaria pet trade” means any activities connected with collecting,
29 holding, selling, and displaying live aquatic marine life for pet, hobby, curio, or
30 display purposes. “Marine aquaria pet trade” does not include activities connected
31 with collecting, holding, selling, or displaying live aquatic marine life by, or for,
32 scientific institutions exempted from permits pursuant to subdivision (c) of Section
33 26710.

34 (b) “Drop net” means a small, circular net with weights attached along the
35 perimeter and a single float attached at the center. A drop net is not more than 48
36 inches in its greatest diameter.

37 **Comment.** Section 20700 continues former Fish and Game Code Section 8596 without
38 substantive change.

1 **§ 20705. Permit requirement**

2 20705. (a) It is unlawful for any person to take, possess aboard a boat, or land,
3 for a marine aquaria pet trade purpose, any live organism identified in Section
4 20710, unless that person has a valid marine aquaria collector's permit that has not
5 been suspended or revoked. If the activity takes place on board or from a boat on
6 which more than one person is aboard, at least one person aboard the boat shall
7 have a valid marine aquaria collector permit.

8 **Comment.** Section 20705 continues former Fish and Game Code Section 8597(a) without
9 substantive change.

10 **§ 20710. Permitted organisms**

11 20710. Except as provided in Section 20725, and unless otherwise prohibited in
12 this code, or regulations adopted pursuant to this code, specimens of the following
13 groups or species may be taken, possessed aboard a boat, or landed under a marine
14 aquaria collector's permit:

15 (a) Marine plants:

16 (1) Chlorophyta.

17 (2) Phaeophyta.

18 (3) Rhodophyta.

19 (4) Spermatophyta, all species.

20 (b) Invertebrates:

21 (1) Polychaeta—worms; all species.

22 (2) Crustacea—shrimp, crabs; all species, except the following:

23 (A) Dungeness crab—*Cancer magister*.

24 (B) Yellow crab—*Cancer anthonyi*.

25 (C) Red crab—*Cancer productus*.

26 (D) Sheep crab—*Loxorhynchus grandis*.

27 (E) Spot prawn—*Pandalus platyceros*.

28 (F) Ridgeback prawn—*Sicyonia ingentis*.

29 (G) Golden prawn—*Penaeus californiensis*.

30 (H) Sand crab—*Emerita analoga*.

31 (I) Redrock shrimp—*Lysmata californica*.

32 (J) Bay shrimp—*Crangon* sp. and *Palaemon macrodactylus*.

33 (K) Ghost shrimp—*Callinassa* sp.

34 (3) Asteroidea—Sea stars; all species.

35 (4) Ophiuroidea—Brittle stars; all species.

36 (5) Gastropoda—snails, limpets, sea slugs; all species, except Kellet's whelk—
37 *Kelletia kelleti*.

38 (6) Bivalvia—clams and mussels; all species.

39 (7) Polyplacophora—Chitons; all species.

40 (8) Cephalopoda—Octopuses and squids; all species, except two spot
41 octopuses—*Octopus bimaculatus* and *Octopus maculoides*—and market squid—
42 *Loligo opalescens*.

(9) Tunicata—Sea squirts; all species.

(c) Vertebrates:

(1) Osteichthyes—Finfishes; all species, except the following:

(A) Rockfish—*Sebastes* sp. larger than six inches total length.

(B) Sheephead—*Semicossyphus pulcher* larger than six inches total length.

(C) Anchovy—*Engraulis mordax*.

(D) Sardine—*Sardinops sagax*.

(E) Pacific/chub —*Scomber japonicus*.

(F) Jack mackerel—*Trachurus symmetricus*.

(G) Queenfish—*Seriphus politus*.

(H) White Croaker—*Genyonemus lineatus*.

(I) Top smelt—*Atherinops affinis*.

(J) Grunion—*Leuresthes tenuis*.

(K) Shiner surf perch—*Cymatogaster aggregata*.

(L) Longjawed mudsucker—*Gillichthys mirabilis*.

(2) Chondrichthyes—sharks, rays, and skates; all species less than 18 inches total length, except that leopard shark (*Triakis semifasciata*) shall be 36 inches or larger in total length.

Comment. Section 20710 continues former Fish and Game Code Section 8597(b) without substantive change.

§ 20715. Scope of permit

20715. The holder of a permit issued pursuant to this title is not required to obtain or possess a kelp harvester's license issued pursuant to Section 54030, a tidal invertebrate permit issued pursuant to Section 45010, or a general trap permit issued pursuant to Section 19205, when taking, possessing, or landing a live organism for a marine aquaria pet trade purpose pursuant to subdivision (b), subject to regulations governing the taking of tidal invertebrates. The commission shall adopt regulations to implement this section, and, for that purpose, may incorporate other regulations by reference.

Comment. Section 20715 continues former Fish and Game Code Section 8597(c) without substantive change.

§ 20720. Prohibited take or possession

20720. (a) Notwithstanding Section 14210 or Section 20710, specimens of the following groups or species shall not be taken, possessed aboard a boat, or landed for a commercial purpose. Taking, possessing, or landing of any of the following species in a commercial operation is prima facie evidence that it was taken, possessed, or landed for a commercial purpose:

(1) Invertebrates:

(A) Phylum Porifera—all sponges.

(B) Genus *Pelagia* sp.—jellyfish.

(C) Coelenterata—corals, anemones; all species.

- 1 (D) Order Gorgonacea—all gorgonians.
- 2 (E) Order Pennatulacea—all species, except *Renilla kollikeri*.
- 3 (F) Feather-duster worm—*Eudistylia polymorpha*.
- 4 (G) Fiddler crab—*Uca crenulata*.
- 5 (H) Umbrella crab—*Cryptolithodes sitchensis*.
- 6 (I) Stalked or goose barnacles—*Pollicipes* sp.
- 7 (J) Giant acorn barnacle—*Balanus nubilus* or *B. aguilula*.
- 8 (K) Owl limpet—*Lottia gigantea*.
- 9 (L) Coffee bean shells—*Trivia* sp.
- 10 (M) Three-winged murex—*Pteropurpura trialata*.
- 11 (N) Vidler's simnia—*Simnia vidleri*.
- 12 (O) Queen tegula—*Tegula regina*.
- 13 (P) Opisthobranchia (including nudibranchs)—all subclass Opisthobranchia
- 14 species except:
 - 15 (i) Sea hares—*Aplysia californica* and *Aplysia vaccaria*.
 - 16 (ii) *Hermisenda crassicornis*.
 - 17 (iii) Lion's mouth—*Melibe leonina*.
 - 18 (iv) *Aeolidia papillosa*.
 - 19 (v) Spanish shawl—*Flabellina iodinea*.
- 20 (2) Vertebrates:
 - 21 (A) All shark and ray eggcases.
 - 22 (B) Brown smoothhound sharks—*Mustelus hinlei*—that are less than 18 inches
 - 23 in a whole condition or dressed with head and tail removed.
 - 24 (C) Family Agonidae—all poachers.
 - 25 (D) Wolf-eel—*Anarrhichthys ocellatus*.
 - 26 (E) Juvenile sheephead—*Semicossyphus pulcher* (under six inches).
 - 27 (F) Garibaldi—*Hypsypops rubicundus*.
- 28 (3) Live rocks.
 - 29 (A) Rocks with living organisms attached, commonly called “live rocks,” shall
 - 30 not be taken or possessed except as provided in subparagraph (C).
 - 31 (B) Rocks shall not be broken to take marine aquaria species, and any rock
 - 32 displaced to access any of those species shall be returned to its original position.
 - 33 (C) Rocks cultured under the authority of an aquaculture registration may be
 - 34 possessed.
 - 35 (b) No organisms may be taken, possessed, or landed for a marine aquaria pet
 - 36 trade purpose under the terms of a marine aquaria collector's permit in any of the
 - 37 following areas:
 - 38 (1) On the north side of Santa Catalina Island from a line extending three
 - 39 nautical miles 90 degrees true from Church Rock to a line extending three nautical
 - 40 miles 270 degrees true from the extreme west end of the island.
 - 41 (2) On the south or “back” side of Santa Catalina Island from a line extending
 - 42 three nautical miles 90 degrees true from Church Rock to a line extending three
 - 43 nautical miles 270 degrees true from the extreme west end of the island.

1 (3) A marine life refuge, marine reserve, ecological reserve, or state reserve.

2 **Comment.** Section 20720 continues former Fish and Game Code Section 8598 without
3 substantive change.

4 **§ 20725. Methods of take**

5 20725. (a) Marine organisms identified in Section 20710 shall not be taken
6 except by the following methods:

7 (1) Hook and line.

8 (2) Drop net.

9 (3) Dip Net.

10 (4) Trap.

11 (5) Hand.

12 (6) Slurp gun.

13 (7) Spatula.

14 (b) Chemical anesthetics, poisons, or irritants shall not be used or possessed by
15 any person taking or possessing fish, plants, or other marine organisms for the
16 marine aquaria industry. For the purposes of this section, chemicals commonly
17 used aboard vessels for insect and rodent control may be possessed aboard a vessel
18 if no means of delivering those chemicals, including, but not limited to, squirt
19 bottles, that can be used to target those marine organisms, is possessed aboard the
20 vessel.

21 (c) Appliances shall be used so that rocks or other mineral matter, aquatic plants,
22 fish, or other aquatic life not listed in Section 20710 are not removed from the
23 bottom or otherwise disturbed.

24 **Comment.** Section 20725 continues former Fish and Game Code Section 8598.2 without
25 substantive change.

26 **§ 20730. Permit fee**

27 20730. (a) The fee for a marine aquaria collector's permit shall be three hundred
28 thirty dollars (\$330).

29 (b) A person engaged in taking, possessing, or landing marine species under a
30 marine aquaria collector's permit shall not take, possess aboard a boat, or land any
31 species under the authority of a scientific collector's permit issued pursuant to
32 **Section 9200, 38200, or 10660** on the same fishing trip.

33 (c) The commission shall adjust the amount of the fee specified in subdivision
34 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
35 and implementation costs of the department and the commission relating to marine
36 aquaria collector's permits.

37 **Comment.** Section 20730 continues former Fish and Game Code Section 8598.3(a) and (c)
38 without substantive change.

1 **§ 20735. Concurrent take or possession under scientific collector’s permit**

2 20735. A person engaged in taking, possessing, or landing marine species under
3 a marine aquaria collector’s permit shall not take, possess aboard a boat, or land
4 any species under the authority of a scientific collector’s permit issued pursuant to
5 **Section 9200, 38200, or 10660**, on the same fishing trip.

6 **Comment.** Section 20735 continues former Fish and Game Code Section 8598.3(b) without
7 substantive change.

8 **§ 20740. Closure of fishery**

9 20740. (a) Notwithstanding any other provision of this code, the director may
10 close any portion of the fishery established under this chapter or any area in which
11 that fishery is conducted, if, upon written finding, the director determines the
12 action is necessary to protect any organisms listed in Section 20710, or the
13 environment in which any of those organisms are located.

14 (b) The director shall reopen a fishery or any fishing areas previously closed
15 pursuant to this section, if the director determines that the condition or conditions
16 that necessitated the closure no longer exist.

17 **Comment.** Section 20740 continues former Fish and Game Code Section 8598.4 without
18 substantive change.

19 **§ 20745. Penalty for violation**

20 20745. Notwithstanding subdivision (a) of Section 4400, a violation of a
21 provision of this chapter or any regulation adopted pursuant to this chapter is
22 punishable by a fine of not less than two thousand dollars (\$2,000), nor more than
23 five thousand dollars (\$5,000).

24 **Comment.** Section 20745 continues former Fish and Game Code Section 8598.6 without
25 substantive change.

26 **TITLE 10. LANDING TAXES AND RECEIPTS**

27 **CHAPTER 1. GENERAL PROVISIONS**

28 **§ 20900. “Landing tax”**

29 20900. For purposes of this title, “landing tax” means a privilege tax imposed
30 pursuant to this title.

31 **Comment.** Section 20900 continues former Fish and Game Code Section 8040(b) without
32 substantive change.

33 **§ 20905. Information from marine aquaria receivers**

34 20905. The department may require any information from a marine aquaria
35 receiver that the department deems necessary to carry out this title.

36 **Comment.** Section 20905 continues former Fish and Game Code Section 8043.1(b) without
37 substantive change.

CHAPTER 2. LANDING TAX

§ 20950. Persons required to pay tax

20950. (a) The following persons shall pay the landing tax determined pursuant to Section 20955:

(1) A fish receiver.

(2) A commercial fisherman who sells fish to a person who is not a fish receiver.

(b) Notwithstanding subdivision (a), no landing tax is required for the receipt, purchase, transport, or sale of the following fish:

(1) Live freshwater fish for use as bait.

(2) Live aquaria fish listed in Section 20710, if received or purchased by a licensed marine aquaria receiver. It is the intent of the Legislature that the license fee for live aquaria fish described in Section 20710 shall be in lieu of a landing tax.

(3) Live marine fish that are not brought ashore for use as live bait.

Comment. Section 20950 combines and restates existing Fish and Game Code Section 8041, and the second sentence of existing Fish and Game Code Section 8047(b), without substantive change.

Notes. (1) Proposed Section 20950 is intended to combine and restate existing Fish and Game Code Section 8041 and the second sentence of existing Fish and Game Code Section 8047(b) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“8041. (a) The following persons shall pay the landing tax determined pursuant to Section 8042:

(1) Any person who is required to be licensed as a fish receiver, and any person who is licensed before January 1, 1987, as a wholesaler or a processor pursuant to former Section 8040 and who receives fish from commercial fishermen.

(2) Any commercial fisherman who sells fish to any person who is not a licensed fish receiver.

(b) Notwithstanding subdivision (a), a person licensed pursuant to Section 8460 who only takes, transports, or sells live freshwater fish for bait or a commercial fisherman who sells live freshwater fish for bait to such a licensed person, and a person licensed pursuant to Section 8033.1 who takes, transports, or sells live aquaria fish as described in Section 8597 or a commercial fisherman who sells live aquaria fish, are exempt from the landing tax imposed under this article. It is the intent of the Legislature that the license fee for live aquaria fish described in Section 8033.1 shall be in lieu of a landing tax.

(c) Notwithstanding subdivision (a), a person who purchases, sells, takes, or receives live marine fish for use as live bait as described in subdivision (g) of Section 8030 is exempt from the landing tax imposed under this article.”

“8047. (b).... Persons subject to Section 8043 shall remit the landing tax imposed by Section 8041.”

The Commission invites comment on whether the restatement of these provisions in proposed Section 20950 would cause any substantive change in the meaning of the provisions.

(2) As indicated above, existing Section 8041 includes among the persons obligated to pay the tax, in addition to fish receivers, person “licensed before January 1, 1987, as a wholesaler or a processor pursuant to former Section 8040 and who receives fish from commercial fishermen.”

It is the Commission's understanding that before January 1, 1987, the licensed category of "fish receiver" did not exist, and persons receiving fish from commercial fishers (other than ultimate consumers) were required to be licensed as either fish wholesalers or processors pursuant to the referenced former version of Section 8040. However, as it is the Commission's further understanding that fish business licenses must be renewed annually. See existing Section 8030. If so, the persons in this described category would long ago have had to obtain licenses as fish receivers, making this described category of persons required to pay landing tax nonexistent. Proposed Section 20950 would therefore delete this category of persons required to pay landing tax as obsolete.

The Commission invites comment on the appropriateness of this deletion from existing Section 8041.

§ 20955. Calculation of tax

20955. (a) The amount of the landing tax under this article shall be determined by multiplying the weight of fish delivered in this state by a commercial fisherman, in pounds, or fraction of pounds, by the rate for the type of fish delivered set forth in the following table:

	Rate per pound
(1) All fish, except as otherwise specified in this section	\$0.0013
(2) Mollusks and crustaceans, excluding squid and crab	.0125
(3) Crab	.0019
(4) Squid	.0019
(5) Salmon, based only on the weight in the round	.0500
(6) Lobster	.0125
(7) Abalone	.0125
(8) Anchovies	.0013
(9) Sardines	.0063
(10) Mackerel	.0013
(11) Halibut	.0125
(12) Angel shark, based only on the weight in the round	.0113

(13) Swordfish, based only on the weight in the round	.0125
(14) Thresher shark, based only on the weight in the round	.0113
(15) Bonito shark, based only on the weight in the round	.0113
(16) Herring	.0125
(17) Sea urchin	.0013
(18) Barracuda, Flying fish, Frogs, Giant sea bass, Saltwater worms, White sea bass, Yellowtail	.0125

(b) If the tax is imposed based upon weight in the round, and the fish is cleaned, gutted, beheaded, or otherwise not in the round at the time of delivery, the tax shall be adjusted by a conversion factor as determined by the department by regulation.

Comment. Subdivision (a) of Section 20955 combines and continues the first sentence of former Fish and Game Code Section 8042, and former Fish and Game Code Section 8051, without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 8042 without substantive change.

CHAPTER 3. LANDING RECEIPTS

Article 1. Completion

§ 21000. Persons required to complete receipt

21000. The following persons are required to make a true, legible, and complete landing receipt, on a form and in a manner prescribed by the department:

(a) The fish receiver, if any.

(b) The marine aquaria receiver, if any.

(c) A commercial fisherman who sells or delivers fish that he or she has taken to any person who is not a fish receiver or marine aquaria receiver.

Comment. Section 21000 combines and restates the first sentence of former Fish and Game Code Section 8043(a), former Fish and Game Code Section 8043.1(a), the second and third sentences of former Fish and Game Code Section 8047(a)(2), and the first sentence of former Fish and Game Code Section 8047(b), without substantive change.

Note. Proposed Section 21000(a) is intended to combine and restate the first sentence of existing Fish and Game Code Section 8043(a), the second and third sentences of existing Fish and Game Code Section 8047(a)(2) (shown in italics), and the first sentence of existing Fish and Game Code Section 8047(b), to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

“8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt record on a form to be furnished by the department.”

“8043.1. (a) A person required to be licensed as a marine aquaria receiver shall make a legible, true, and complete record of the landing receipts on a form and in a manner prescribed by the department.”

“8047. (a)(2) A person licensed under Section 8033.5 who sells his or her fish to a licensed receiver may use a transportation receipt to transport those fish only to that licensed receiver. *The receiver shall complete a landing receipt for those fish. A person who sells his or her fish to the ultimate consumer shall complete a landing receipt pursuant to Sections 8043 and 8043.2.*”

“8047. (b) Every commercial fisherman who sells fish taken from the waters of this state or brought into this state in fresh condition to persons not licensed to receive fish for commercial purposes pursuant to Article 7 (commencing with Section 8030) shall make a legible record in the form of the landing receipt required by Sections 8043 and 8043.1.”

The Commission invites comment on whether the restatement of these provisions in proposed Section 21000 would cause any substantive change in the meaning of any of the provisions.

§ 21005. When receipt must be completed

21005. (a) A fish receiver who is required to complete a landing receipt shall do so at the time of the receipt, purchase, or transfer of the fish, whichever occurs first.

(b) A marine aquaria receiver who is required to complete a landing receipt shall do so at the time of the receipt of the organisms.

(c) A person required to be licensed under Title 9 (commencing with Section 20200) who takes his or her own fish shall complete a landing receipt shall do so at the time the fish are brought ashore.

Comment. Subdivision (a) of Section 21005 restates the second sentence of former Fish and Game Code Section 8043(a), as applicable to fish receivers, without substantive change.

Subdivision (b) restates the first sentence of former Fish and Game Code Section 8043.1(c) without substantive change.

Subdivision (c) combines and restates the second sentence of former Fish and Game Code Section 8043.1(c) and the first sentence of former Fish and Game Code Section 8047(a)(1) without substantive change.

Notes. (1) Proposed Section 21005(a) is intended to restate the second sentence of existing Fish and Game Code Section 8043(a), as applicable to fish receivers, to clarify the meaning of that provision without changing its substantive effect. The existing provision (indicated in italics) reads as follows:

“8043. (a) Every commercial fisherman who sells or delivers fish that he or she has taken to any person who is not licensed under Article 7 (commencing with Section 8030), and every person who is required to be licensed under Article 7 (commencing with Section 8030) to conduct the activities of a fish receiver, as described in Section 8033, shall make a legible landing receipt record on a form to be furnished by the department. *The landing receipt shall be completed at the time of the receipt, purchase, or transfer of fish, whichever occurs first.*”

The Commission invites comment on whether the restatement of this provision in proposed Section 21005(a) would cause any substantive change in the meaning of the provision.

(2) Proposed Section 21005(b) is intended to restate the first sentence of existing Fish and Game Code Section 8043.1(c), to clarify the meaning of that provision without changing its substantive effect. The existing provision (indicated in italics) reads as follows:

“8043.1. (a) A person required to be licensed as a marine aquaria receiver shall make a legible, true, and complete record of the landing receipts on a form and in a manner prescribed by the department.

....
(c) *The landing receipt form shall be completed at the time the organisms are received from the commercial fisherman.*”

The Commission invites comment on whether the restatement of this provision in proposed Section 21005(b) would cause any substantive change in the meaning of the provision.

(3) Proposed Section 21005(c) is intended to combine and restate the second sentence of existing Fish and Game Code Section 8043.1(c) and the first sentence of existing Fish and Game Code Section 8047(a)(1), to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

“8043.1. (c).... A person required to be licensed as a marine aquaria receiver who takes his or her own organisms shall complete a marine aquaria landing receipt form at the time the organisms are brought ashore.”

“8047. (a)(1) A person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish shall make a legible record in the form of the landing receipt as required by Sections 8043 and 8043.1 at the time the fish are brought ashore.”

The Commission invites comment on whether the restatement these two provisions in proposed Section 21005(c) would cause any substantive change in the meaning of either provision.

§ 21010. Method of completion by commercial fisherman

21010. A commercial fisherman who is required to complete a landing receipt shall do so in either of the following ways:

(a) For each individual sale by that commercial fisherman, at the time of the sale.

(b) For each day that the commercial fisherman is engaged in one or more sales to the ultimate consumers, the commercial fisherman shall maintain an accurate tally sheet of sales, which shall include complete header and signature box information filled out prior to any sales, and the number of pounds, by species, of fish sold. The total of the daily sales shall be recorded on the landing receipt at the completion of sales for that day. A copy of the completed tally sheet shall be attached to the corresponding landing receipt. The original completed tally sheet shall be attached to the commercial fisherman’s copy of the corresponding landing receipt and maintained for a period of four years.

Comment. Section 21010 restates former Fish and Game Code Section 8043.2(a) without substantive change.

Note. Proposed Section 21010 is intended to restate existing Fish and Game Code Section 8043.2(a) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8043.2. (a) A commercial fisherman licensed pursuant to Section 8033.5 who sells fish from a vessel directly to the ultimate consumer and who is required pursuant to Section 8043 to make a landing receipt shall make a landing receipt in either of the following ways:

(1) For each individual sale by that fisherman at the time of the sale.

(2) For each day that the fisherman is engaged in one or more sales to the ultimate consumers, the fisherman shall maintain an accurate tally sheet of sales, which shall include complete header and signature box information filled out prior to any sales, and the number of pounds by species of fish sold. The total of the daily sales shall be recorded at the completion of sales for that day on a landing receipt. A copy of the completed tally sheet shall be attached to the corresponding landing receipt. The original completed tally sheet shall be attached to the fisherman’s copy of the corresponding landing receipt and maintained for a period of four years.”

The Commission invites comment on whether the restatement of this provision in proposed Section 21010 would cause any substantive change in the meaning of the provision.

§ 21015. Advance notification to agent when specified fish landed

21015. On delivery of sardines, anchovies, mackerel, squid, tuna, or bonito intended to be processed or sold as fresh fish, the person who completes the landing receipt, upon request of the authorized agent described in Section 21110, shall notify that agent of the unloading and weighing of the fish, and shall permit the agent to be present at all times during the weighing of the fish.

Comment. Section 21015 restates former Fish and Game Code Section 8046(b) without substantive change.

Note. Proposed Section 21015 is intended to restate existing Fish and Game Code Section 8046(b) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8046. (b) On delivery of sardines, anchovies, mackerel, squid, tuna, or bonito intended to be processed or sold as fresh fish, the person licensed pursuant to Article 7 (commencing with Section 8030) who filled out the landing receipt, upon request of the authorized agent described in subdivision (c), shall notify the authorized agent of the unloading and weighing of the fish and shall permit the authorized agent to be present at all times during the weighing of the fish.”

The Commission invites comment on whether the restatement of this provision in proposed Section 21015 would cause any substantive change in the meaning of the provision.

§ 21020. Content of receipt

21020. A landing receipt shall show all of the following:

(a) The names of the species of landed fish as designated by the department, or if not designated, the commonly used name of the species.

(b) The accurate weight of the species of fish received. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.

(c) The commercial fisherman's name and commercial fishing license identification number.

(d) The commercial boat registration number of the boat.

(e) The name of the recipient of the fish, and that person's identification number, if applicable.

(f) The date of receipt.

(g) The price paid for the fish.

(h) The department origin block number where the fish were caught.

(i) The type of gear used.

(j) Any other information the department may require.

Comment. Section 21020 combines and restates former Fish and Game Code Sections 8043(b) and 8045 without substantive change.

Note. Proposed Section 21020 is intended to combine and restate existing Fish and Game Code Sections 8043(b) and 8045, to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

"8043. (b) The landing receipt shall show all of the following:

(1) The accurate weight of the species of fish received, as designated pursuant to Section 8045. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.

(2) The name of the fisherman and the fisherman's identification number.

(3) The department registration number of the boat.

(4) The recipient's name and identification number, if applicable.

(5) The date of receipt.

(6) The price paid.

(7) The department origin block number where the fish were caught.

(8) The type of gear used.

(9) Any other information the department may prescribe."

"8045. The names used in the landing receipt and transportation receipt made under Sections 8043 and 8047 for designating the species of fish dealt with shall be those in common usage unless otherwise designated by the department."

The Commission invites comment on whether the restatement of these two provisions in proposed Section 21020 would cause any substantive change in the meaning of either provision.

§ 21025. Additional requirements applicable to completion of landing receipts

21025. (a) The person that completes the landing receipt shall sign the receipt.

(b) The numbered landing receipts in each individual landing receipt book shall be completed sequentially.

(c) A voided fish landing receipt shall have the word "VOID" plainly and noticeably written on the face of the receipt, and shall be submitted to the department in the same manner as a completed fish landing receipt is submitted to the department.

Comment. Subdivision (a) of Section 21025 restates the third sentence of former Fish and Game Code Section 8047(b) without substantive change.

Subdivision (b) continues the first sentence of former Fish and Game Code Section 8043(c) without substantive change.

Subdivision (c) continues the second and third sentences of former Fish and Game Code Section 8043(c) without substantive change.

Note. Proposed Section 21025(a) is intended to restate the third sentence of existing Fish and Game Code Section 8047(b) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8047. (b).... The person taking, purchasing, or receiving the fish, whether or not licensed under Article 7 (commencing with Section 8030), shall sign the landing receipt.”

The Commission invites comment on whether the restatement of this provision in proposed Section 21025(a) would cause any substantive change in the meaning of the provision.

Article 2. Retention and Delivery of Copies

§ 21100. When receipt completed by fish receiver or marine aquaria receiver

21100. (a) A fish receiver or marine aquaria receiver who completes a landing receipt shall retain a completed copy of the receipt for a period of four years, which shall be available for inspection at any time within that period by the department.

(b) The receiver shall also deliver a completed copy of the receipt to the commercial fisherman at the time of the purchase or receipt of the fish, which shall be retained by the commercial fisherman for a period of four years, and shall be available for inspection at any time during that period by the department.

Comment. Section 21100 restates the second, third, and fourth sentences of former Fish and Game Code Section 8046(a) without substantive change.

Note. Proposed Section 21100 is intended to restate the second, third, and fourth sentences of existing Fish and Game Code Section 8046(a) to clarify the meaning of those sentences, without changing their substantive effect. The existing sentences read as follows:

“8046. (a).... A copy of the landing receipt shall be delivered to the commercial fisherman at the time of the purchase or receipt of the fish. That copy of the landing receipt shall be retained by the commercial fisherman for a period of four years and shall be available for inspection at any time during that period by the department. A copy of the landing receipt shall be kept by the person licensed pursuant to Article 7 (commencing with Section 8030) who filled out the landing receipt for a period of four years and shall be available for inspection at any time within that period by the department.”

The Commission invites comment on whether the restatement of these sentences in proposed Section 21100 would cause any substantive change in the meaning of the provision.

§ 21105. When receipt completed by commercial fisherman

21105. (a) A commercial fisherman who completes a landing receipt shall retain a completed copy of the receipt for a period of four years, which shall be available for inspection at any time within that period by the department.

(b) The commercial fisherman shall also deliver a completed copy of the receipt to the person taking, purchasing, or receiving the fish, which shall be retained by that person until the fish are prepared for consumption or otherwise disposed of.

1 **Comment.** Subdivision (a) of Section 21105 combines and restates the third sentence of
2 existing Fish and Game Code Section 8047(a)(1) and the fifth sentence of former Fish and Game
3 Code Section 8047(b) without substantive change.

4 Subdivision (b) restates the sixth sentence of former Fish and Game Code Section 8047(b)
5 without substantive change.

6 **Note.** Proposed Section 21105(a) is intended to combine and restate the third sentence of
7 existing Fish and Game Code Section 8047(a)(1) and the fifth and sixth sentences of existing Fish
8 and Game Code Section 8047(b) to clarify the meaning of those sentences, without changing their
9 substantive effect. The existing sentences read as follows:

10 “8047(a)(1).... A copy of the landing receipt shall be retained by [a person licensed under
11 Article 7 (commencing with Section 8030) who takes his or her own fish] for a period of four
12 years and shall be available for inspection at any time within that period by the department.

13 “8047. (b).... A copy of the landing receipt shall be retained by the commercial fisherman for a
14 period of four years and shall be available for inspection at any time within that period by the
15 department. A copy of the landing receipt shall be retained by the person taking, purchasing, or
16 receiving the fish until they are prepared for consumption or otherwise disposed of.”

17 **The Commission invites comment on whether the restatement of these sentences in**
18 **proposed Section 21105 would cause any substantive change in the meaning of the**
19 **provision.**

20 **§ 21110. Delivery of copy to agent**

21 21110. Any person completing a landing receipt shall also deliver a completed
22 copy of the receipt to any agent authorized in writing by the majority of the
23 persons who participated in the taking of the fish, excluding the commercial
24 fisherman receiving a copy of the receipt pursuant to Section 21100.

25 **Comment.** Section 21110 combines and restates former Fish and Game Code Section 8046(c),
26 the fourth sentence of former Fish and Game Code Section 8047(a)(1), and the 7th sentence of
27 former Fish and Game Code Section 8047(b) without substantive change.

28 **Note.** Proposed Section 21110 is intended to combine and restate existing Fish and Game
29 Code Section 8046(c), the fourth sentence of existing Fish and Game Code Section 8047(a)(1),
30 and the 7th sentence of existing Fish and Game Code Section 8047(b) (which are themselves
31 identical) to clarify the meaning of those sentences, without changing their substantive effect. All
32 three of those provisions read as follows:

33 “A copy of the landing receipt shall be delivered to an agent authorized in writing by the
34 majority of the persons who participated in the taking of the fish, excluding the commercial
35 fisherman receiving the original copy.”

36 **The Commission invites comment on whether the restatement of these sentences in**
37 **proposed Section 21110 would cause any substantive change in the meaning of the**
38 **provision.**

39 **§ 21115. Landing of groundfish**

40 21115. In addition to the requirements of Sections 21015, 21100, 21110, and
41 21150, any person landing groundfish subject to federal groundfish regulations
42 adopted pursuant to the Magnuson Fishery Conservation and Management Act (16
43 U.S.C. Sec. 1801 et seq.) shall keep a copy of the landing receipt on board the
44 fishing vessel throughout, and for 15 days following, each period for which
45 cumulative landings by individual vessels are limited.

Comment. Section 21115 continues former Fish and Game Code Section 8046.1 without substantive change.

Article 3. Delivery to Department

§ 21150. Delivery of landing receipt to department

21150. The original signed copy of a completed landing receipt shall be delivered to the department by the person completing the receipt on or before the 16th or last day of the month in which the fish were landed, whichever date occurs first after the landing.

Comment. Section 21150 combines and restates the first sentence of former Fish and Game Code Section 8046(a) and the second sentence of former Fish and Game Code Section 8047(a)(1) without substantive change.

Notes. (1) Proposed Section 21150 is intended to combine and restate the first sentence of existing Fish and Game Code Section 8046(a) and the second sentence of existing Fish and Game Code Section 8047(a)(1) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“8046. (a) The original signed copy of the landing receipt made under Section 8043 or 8043.1 shall be delivered to the department on or before the 16th or last day of the month in which the fish were landed, whichever date occurs first after the landing.”

“8047. (a)(1).... The original signed copy of the landing receipt shall be delivered by [a person licensed under Article 7 (commencing with Section 8030) who takes his or her own fish] to the department on or before the 16th day or the last day of the month in which the fish were landed, whichever date occurs first after landing.”

The Commission invites comment on whether the restatement of these provisions in proposed Section 21150 would cause any substantive change in the meaning of the provisions.

(2) There appear to be two minor statutory conflicts in the existing Fish and Game Code regarding delivery to the Department of Fish and Wildlife of landing receipts. First, with regard to landing receipts corresponding to marine aquaria organisms, existing Section 8043.1(d) provides as follows:

“8043.1. (d) The copies of the aquaria landing receipts shall be delivered to the department *on or before the 1st and 16th day of each month* as provided in Section 8046.

However, existing Section 8046(a) provides as follows:

“8046. (a) The original signed copy of the landing receipt made under Section... 8043.1 shall be delivered to the department *on or before the 16th or last day of the month* in which the fish were landed, whichever date occurs first after the landing.

Second, existing Section 8047, which addresses a number of different subjects, including landing tax, landing receipts, and transportation receipts, provides in the fourth sentence of subdivision (b) that “The original signed copy of the landing receipt shall be delivered by the commercial fisherman to the department *on or before the first and 16th day of each month*.”

Proposed Section 21150 would continue the requirement as stated in existing Section 8046(a), as this section appears intended as the primary authority governing this issue, and would discontinue the requirement stated in Section 8043.1(d) and 8047(b), to the extent inconsistent.

The Commission invites comment on the correctness of this approach.

1 **§ 21155. Unused landing receipts**

2 21155. A person who was previously but is no longer conducting business as a
3 fish receiver shall forward all unused landing receipts and landing receipt books to
4 the department immediately upon terminating his or her business activity.

5 **Comment.** Section 21155 restates the fourth sentence of former Fish and Game Code Section
6 8043(c) without substantive change.

7 **Note.** Proposed Section 21155 is intended to restate the fourth sentence of existing Fish
8 and Game Code Section 8043(c) to clarify the meaning of that provision, without changing its
9 substantive effect. The existing provision reads as follows:

10 “8043. (c).... A fish receiver who is no longer conducting business as a licensed receiver shall
11 forward all unused landing receipts and landing receipt books to the department immediately
12 upon terminating his or her business activity.”

13 **The Commission invites comment on whether the restatement of this provision in**
14 **proposed Section 14455 would cause any substantive change in the meaning of the**
15 **provision.**

16 CHAPTER 4. TRANSPORTATION RECEIPTS

17 **§ 21200. Issuance of transportation receipt book**

18 21200. A transportation book receipt shall be issued to an individual commercial
19 fisherman and is not transferable.

20 **Comment.** Section 21200 continues former Fish and Game Code Section 8047(c)(5) without
21 substantive change.

22 **§ 21205. Purpose**

23 21205. A transportation receipt is required only for transit purposes.

24 **Comment.** Section 21205 continues former Fish and Game Code Section 8047(c)(3) without
25 substantive change.

26 **§ 21210. Persons required to complete**

27 21210. (a) Every commercial fisherman or his or her designee, who transports,
28 causes to be transported, or delivers to another person for transportation, any fish,
29 except herring, taken from the waters of this state or brought into this state in fresh
30 condition, shall fill out a transportation receipt according to the instructions and on
31 forms provided by the department.

32 (b) A commercial fisherman who sells his or her fish to a fish receiver may use a
33 transportation receipt to transport those fish only to that receiver.

34 **Comment.** Subdivision (a) of Section 21210 continues the first part of former Fish and Game
35 Code Section 8047(c)(1) without substantive change.

36 Subdivision (b) restates the first sentence of former Fish and Game Code Section 8047(a)(2)
37 without substantive change.

38 **Note.** Proposed Section 21210(b) is intended to restate the first sentence of existing Fish
39 and Game Code Section 8047(a)(1) to clarify the meaning of that provision, without changing its
40 substantive effect. The existing provision reads as follows:

1 “8047. (a)(1) A person licensed under Section 8033.5 who sells his or her fish to a licensed
2 receiver may use a transportation receipt to transport those fish only to that licensed receiver. The
3 receiver shall complete a landing receipt for those fish.”

4 As a “person licensed under existing Section 8033.5” is a commercial fisherman who sells fish
5 to an ultimate consumer (rather than a receiver), the Commission has interpreted that language as
6 referring to commercial fishers generally.

7 **The Commission invites comment on whether that interpretation is correct, and whether**
8 **the restatement of this provision in proposed Section 21210(b) would cause any substantive**
9 **change in the meaning of the provision.**

10 **§ 21215. Time of completion**

11 21215. A transportation receipt shall be completed at the time fish are
12 transferred from the fishing vessel to the shore.

13 **Comment.** Section 21215 combines and restates the fourth sentence of former Fish and Game
14 Code Section 8047(a)(2) and the last part of former Fish and Game Code Section 8047(c)(1),
15 without substantive change.

16 **Note.** Proposed Section 21215 is intended to combine and restate the fourth sentence of
17 existing Fish and Game Code Section 8047(a)(2) and the last part of existing Fish and Game
18 Code Section 8047(c)(1) to clarify the meaning of those provisions, without changing their
19 substantive effect. The existing provisions read as follows:

20 “8047. (a)(2).... Transportation receipts shall be completed at the time the fish are transferred
21 from the fishing vessel.”

22 “8047. (c)(1).... Every commercial fisherman... shall fill out a transportation receipt... at the
23 time the fish are brought ashore.”

24 **The Commission invites comment on whether the restatement of these provisions in**
25 **proposed Section 14450 would cause any substantive change in the meaning of the**
26 **provisions.**

27 **§ 21220. Method of completion**

28 21220. The numbered transportation receipt forms in each individual
29 transportation receipt book shall be completed sequentially.

30 **Comment.** Section 21220 continues the first sentence of former Fish and Game Code Section
31 8047(e) without change.

32 **§ 21225. Content**

33 21225. The transportation receipt shall contain all of the following information:

34 (a) The name of each transported species of fish as designated by the
35 department, or if not designated, the commonly used name of each species.

36 (b) The date and time of the receipt.

37 (c) The accurate weight of the species of fish being transported. Sablefish may
38 be reported in dressed weight, and if so reported, shall have the round weights
39 computed, for purposes of management quotas, by multiplying 1.6 times the
40 reported dressed weight.

41 (d) The name and identification number of the commercial fisherman.

42 (e) The signature of the commercial fisherman authorizing transportation.

43 (f) The name of the person transporting the fish.

- (g) The name of the fish business and fish business identification number.
- (h) The corresponding landing receipt number issued by the fish business to the commercial fisherman.
- (i) The department registration number of the vessel.
- (j) The name of the vessel.
- (k) The department origin block number where the fish were caught.
- (l) The port of first landing.
- (m) Any other information the department may prescribe.

Comment. Section 21225 combines and restates former Fish and Game Code Sections 8045 and 8047(d) without substantive change.

Note. Proposed Section 21225 is intended to combine and restate existing Fish and Game Code Sections 8045 and 8047(d), to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

“8045. The names used in the landing receipt and transportation receipt made under Sections 8043 and 8047 for designating the species of fish dealt with shall be those in common usage unless otherwise designated by the department.”

“8047. (d) The transportation receipt shall contain all of the following information:

- (1) The name of each species of fish, pursuant to Section 8045.
- (2) The date and time of the receipt.
- (3) The accurate weight of the species of fish being transported. Sablefish may be reported in dressed weight, and if so reported, shall have the round weights computed, for purposes of management quotas, by multiplying 1.6 times the reported dressed weight.
- (4) The name and identification number of the fisherman. The signature of the fisherman authorizing transportation.
- (5) The name of the person transporting the fish.
- (6) The name of the fish business, the fish business identification number, and the corresponding landing receipt number issued by the fish business to the commercial fisherman.
- (7) The department registration number of the vessel and the name of the vessel.
- (8) The department origin block number where the fish were caught.
- (9) The port of first landing.
- (10) Any other information the department may prescribe.”

The Commission invites comment on whether the restatement of these two provisions in proposed Section 21225 would cause any substantive change in the meaning of either provision.

§ 21230. Retention and delivery of copies

21230. (a) A copy of a completed transportation receipt shall be retained by the commercial fisherman who filled it out for a period of four years, and shall be available for inspection at any time within that period by the department.

(b) A copy of the transportation receipt shall be given to and retained by the person transporting the fish until the fish are sold fresh, processed, or otherwise disposed of.

Comment. Subdivision (a) of Section 21230 continues the second sentence of former Fish and Game Code Section 8047(c)(2) without substantive change.

Subdivision (b) continues the third sentence of former Fish and Game Code Section 8047(c)(2) without change.

1 **§ 21235. Delivery to department**

2 21235. The original transportation receipt shall be signed and delivered by the
3 commercial fisherman to the department on or before the 16th day or the last day
4 of the month in which the fish were landed, whichever date occurs first after
5 landing.

6 **Comment.** Section 21235 restates the first sentence of former Fish and Game Code Section
7 8047(c)(2) without substantive change.

8 **Note.** Proposed Section 21235 is intended to restate the first sentence of existing Fish and
9 Game Code Section 8047(c)(2) to clarify the meaning of that provision, without changing its
10 substantive effect. The existing provision reads as follows:

11 “8047. (c)(2) The original signed copy of the transportation receipt shall be delivered by the
12 commercial fisherman to the department on or before the 16th day or the last day of the month in
13 which the fish were landed, whichever date occurs first after landing.”

14 **The Commission invites comment on whether the restatement of this provision in**
15 **proposed Section 21235 would cause any substantive change in the meaning of the**
16 **provision.**

17 **§ 21240. Void receipts**

18 21240. A voided fish transportation receipt shall have the word “VOID” plainly
19 and noticeably written on the face of the receipt, and shall be submitted to the
20 department in the same manner as a completed fish transportation receipt is
21 submitted to the department.

22 **Comment.** Section 21240 continues the second and third sentences of former Fish and Game
23 Code Section 8047(e) without substantive change.

24 **§ 21245. Unused receipts**

25 21245. A person who was previously but is no longer conducting business as a
26 commercial fisherman shall forward all unused transportation receipts and
27 transportation receipt books to the department immediately upon terminating his
28 or her business activity.

29 **Comment.** Section 21245 continues the fourth sentence of former Fish and Game Code
30 Section 8047(e) without substantive change.

31 **Note.** Proposed Section 21245 is intended to restate the existing sentence of former Fish
32 and Game Code Section 8047(e) to clarify the meaning of that provision, without changing its
33 substantive effect. The existing provision reads as follows:

34 “8047. (e) A commercial fisherman who is no longer conducting business as a licensed
35 fisherman shall forward all unused transportation receipts and transportation receipt books to the
36 department immediately upon terminating his or her business activity.”

37 **The Commission invites comment on whether the restatement of this provision in**
38 **proposed Section 21245 would cause any substantive change in the meaning of the**
39 **provision.**

CHAPTER 5. ACCOUNTING RECORDS

§ 21300. Accounting records

21300. (a) In addition to the receipt required by Section 21000, accounting records containing the information specified in subdivision (b) shall be kept by all of the following persons:

(1) Any person required to be licensed under Title 9 (commencing with Section 20200).

(2) Any person who deals in fresh or frozen fish for profit.

(b) The accounting records shall contain all of the following:

(1) The name as designated by the department of each different species of fish sold, distributed, or taken, or if not designated, the commonly used name of each species.

(2) The number of pounds sold, distributed, or taken of each different species.

(3) The name of the person to whom the fish were sold or distributed.

(4) The name, address, and phone number of the seller or distributor.

(5) The date of sale.

(6) The price paid.

(7) The intended use of the fish.

(c) Accounting record information required by this section that is transmitted from any person identified in subdivision (a) to any business that deals in fish for profit shall be in the English language.

(d) The accounting records shall be maintained within the state by both buyer and seller for a period of three years. Upon request, the records shall be open for inspection during normal business hours by the department.

Comment. Section 21300 restates former Fish and Game Code Section 8050 without substantive change.

Note. Proposed Section 21300 is intended to restate existing Fish and Game Code Section 8050 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8050. (a) In addition to the receipt required in Section 8043, every person licensed under Article 7 (commencing with Section 8030), and any commercial fisherman who sells fish to persons who are not licensed under Article 7 (commencing with Section 8030), and any person who deals in fresh or frozen fish for profit, shall keep accounting records in which all of the following shall be recorded:

(1) The names of the different species.

(2) The number of pounds sold, distributed, or taken of each different species.

(3) The name of the person to whom the fish were sold or distributed.

(4) The name, address, and phone number of the seller or distributor.

(5) The date of sale.

(6) The price paid.

(7) The intended use.

(b) Accounting record information required by this section that is transmitted from any person identified in subdivision (a) to any business that deals in fish for profit shall be in the English language.

(c) The accounting records shall be maintained by both buyer and seller for a period of three years and upon request, shall be open for inspection during normal business hours by the department. The accounting records shall be maintained within the State of California.

(d) The names used for designating the species of fish shall be those in common usage unless otherwise designated by the department.”

The Commission invites comment on whether the restatement of this provision in proposed Section 21300 would cause any substantive change in the meaning of the provision.

CHAPTER 6. PAYMENT AND USE OF TAX

§ 21350. Quarterly payment to department

21350. (a) Landing taxes imposed by this title shall be paid quarterly to the department, within 30 days after the close of each quarter.

(b) If any landing tax is not paid within 30 days after the close of the quarter for which it is due, the department shall collect amounts owing under the procedures prescribed for sales and use taxes provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701) of Part 1 of Division 2 of the Revenue and Taxation Code, insofar as they may be applicable, and for those purposes, “board” means the department and “the date on which the tax Became due and payable” means that date 30 days after the close of the quarter for which it is due.

Comment. Section 21350 continues former Fish and Game Code Section 8053 without substantive change.

§ 21355. Use of landing tax

21355. Except as otherwise provided in this title, all moneys collected pursuant to this title shall be paid to the department, and shall be expended for the patrol of packing plants, inspection and regulation of the fishing industry, and conservation work for the benefit of the commercial fishing industries.

Comment. Section 21355 continues former Fish and Game Code Section 8056 without substantive change.

§ 21360. Exceptions to use of landing tax

21360. Landing taxes shall be used only for the administration of laws relating to the commercial fishing industry, except as follows:

(a) Not less than 90 percent of the landing tax on herring taken for roe shall be expended for research and management activities to maintain and enhance the herring resources within the waters of the state.

(b) Not less than 90 percent of the landing tax on thresher shark or bonito (mako) shark shall be expended for the study required by, and for the costs of administering, Chapter 7 (commencing with Section 18300) of Title 4 of Part 6.

Comment. Section 21360 continues former Fish and Game Code Section 8052 without substantive change.

1 **§ 21365. Overpayment of tax**

2 21365. (a) If the department determines that any tax or penalty has been paid
3 more than once or has been erroneously or illegally collected or computed, the
4 department shall set forth that fact in the records of the department. The excess
5 amount collected or paid shall be credited on any amounts then due and payable
6 from the person under this part, and the balance shall be refunded to the person, or
7 his successors, administrators, or executors.

8 (b) In the event of overpayment of any of the taxes imposed by this title, the
9 taxpayer may file a claim for refund or a claim for credit with the department. No
10 refund or credit shall be approved by the department unless the claim is filed with
11 the department within six months after the close of the calendar year in which the
12 overpayment was made.

13 (c) Every claim for refund or credit for overpayment of a landing tax shall be in
14 writing, and shall state the specific grounds upon which the claim is founded.

15 (d) Failure to file a claim for refund or credit within the time prescribed in this
16 title constitutes a waiver of any demand against the state on account of
17 overpayment of a landing tax or taxes.

18 (e) Within 30 days after disallowing any claim for refund or credit for
19 overpayment of a landing tax in whole or in part, the department shall serve notice
20 of its action on the claimant, either personally or by mail. If served by mail,
21 service shall be made pursuant to Section 1013 of the Code of Civil Procedure,
22 and shall be addressed to the licensee at his or her address as it appears in the
23 records of the department, but the service shall be deemed complete at the time of
24 the deposit of the notice in the mail without extension of time for any reason.

25 (f) Interest shall be paid upon any overpayment of landing tax at the rate of one-
26 half of 1 percent per month from the date of overpayment. The interest shall be
27 paid to the date the claim for refund or credit is approved by the department.

28 (g) If the department determines that any overpayment of a landing tax has been
29 made intentionally or by reason of carelessness, it shall not allow any interest on
30 that overpayment.

31 **Comment.** Subdivision (a) of Section 21365 continues former Fish and Game Code Section
32 8057 without substantive change.

33 Subdivision (b) continues former Fish and Game Code Section 8058 without substantive
34 change.

35 Subdivision (c) continues former Fish and Game Code Section 8059 without substantive
36 change.

37 Subdivision (d) continues former Fish and Game Code Section 8060 without substantive
38 change.

39 Subdivision (e) continues former Fish and Game Code Section 8061 without substantive
40 change.

41 Subdivision (f) continues former Fish and Game Code Section 8062 without substantive
42 change.

43 Subdivision (g) continues former Fish and Game Code Section 8063 without substantive
44 change.

1 **§ 21370. Legal process to prevent collection of tax**

2 21370. No injunction or writ of mandate or other legal or equitable process shall
3 issue in any suit, action, or proceeding in any court, against this state, or against
4 any officer of the state, to prevent or enjoin the collection under this title of any
5 landing tax.

6 **Comment.** Section 21370 continues former Fish and Game Code Section 8064 without
7 substantive change.

8 **§ 21375. Legal process to recover overpaid landing tax**

9 21375. (a) No suit or proceeding shall be maintained in any court for the
10 recovery of any amount of landing tax alleged to have been erroneously paid or
11 erroneously or illegally determined or collected, unless a claim for refund or credit
12 has been duly filed pursuant to Section 21365.

13 (b) Within 90 days after the mailing of the notice of the department's action
14 upon a claim filed pursuant to Section 21365, the claimant may bring an action
15 against the department on the grounds set forth in the claim, in a court of
16 competent jurisdiction in any city or city and county of this state in which the
17 Attorney General has an office, for the recovery of the whole or any part of the
18 amount with respect to which the claim has been disallowed. Failure to bring the
19 action within the time specified constitutes a waiver of any demand against the
20 state on account of alleged overpayments.

21 (c) If the department fails to mail notice of action on a claim for refund or credit
22 for overpayment of a landing tax within six months after the claim is filed, the
23 claimant may, prior to the mailing of notice by the department of its action on the
24 claim, consider the claim disallowed and bring an action against the department on
25 the grounds set forth in the claim for the recovery of the whole or any part of the
26 amount claimed as an overpayment.

27 (d) If judgment in an action against the department is rendered for the plaintiff,
28 the amount of the judgment shall first be credited on any landing tax due and
29 payable from the plaintiff to the state under this title. The balance of the judgment
30 shall be refunded to the plaintiff.

31 (e) In any judgment, interest shall be allowed at the legal rate of interest on
32 unsatisfied judgments, as provided in Section 685.010 of the Code of Civil
33 Procedure, upon the amount found to have been illegally collected, from the date
34 of payment of the amount to the date of allowance of credit on account of the
35 judgment, or to a date to be determined by the department, preceding the date of
36 the refund warrant by not more than 30 days.

37 (f) A judgment shall not be rendered in favor of the plaintiff in any action
38 brought against the department to recover any amount paid, when the action is
39 brought by or in the name of an assignee of the person paying the amount or by
40 any person other than the person who paid the amount.

41 **Comment.** Subdivision (a) of Section 21375 continues former Fish and Game Code Section
42 8065 without substantive change.

1 Subdivision (b) continues former Fish and Game Code Section 8066 without substantive
2 change.

3 Subdivision (c) continues former Fish and Game Code Section 8067 without change.

4 Subdivision (d) continues former Fish and Game Code Section 8068 without substantive
5 change.

6 Subdivision (e) continues former Fish and Game Code Section 8069 without substantive
7 change.

8 Subdivision (f) continues former Fish and Game Code Section 8070 without substantive
9 change.

10 CHAPTER 7. VIOLATIONS

11 § 21400. Suspension or revocation of commercial fishing license or privileges

12 21400. The commission, upon recommendation of the department, may suspend
13 or revoke the commercial fishing privileges of any commercial fisherman, or the
14 license of any person required to be licensed under Title 9 (commencing with
15 Section 20200), who is convicted of a violation of this title.


16 **Comment.** Section 21400 continues the part of former Fish and Game Code Section 8025(a)
17 applicable to violations of Article 7.5 (commencing with Fish and Game Code Section 8010) of
18 Chapter 1 of Part 3 of Division 6 of the former Fish and Game Code without substantive change.

19 CHAPTER 8. MISCELLANEOUS PROVISIONS

20 § 21450. Weighmasters

21 21450. A fish retailer who sells directly to the ultimate consumer, or a
22 commercial fisherman who sells or delivers fish that the fisherman has taken, to a
23 person who is not licensed as a fish receiver, shall not be considered a
24 weighmaster for purposes of Chapter 7 (commencing with Section 12700) of
25 Division 5 of the Business and Professions Code.

26 **Comment.** Section 21450 restates former Fish and Game Code Section 8043.2(b) without
27 substantive change.

28  **Note.** Proposed Section 21450 is intended to restate existing Fish and Game Code Section
29 8043.2(b) to clarify the meaning of that provision, without changing its substantive effect. The
30 existing provision reads as follows:

31 “8043.2. (b) A commercial fisherman licensed pursuant to Section 8033.5 who sells directly to
32 the ultimate consumer, or a commercial fisherman who sells or delivers fish that the fisherman
33 has taken to any person who is not licensed under Article 7 (commencing with Section 8030) to
34 conduct the activities of a fish receiver, shall not be considered a weighmaster for purposes of
35 Chapter 7 (commencing with Section 12700) of Division 5 of the Business and Professions
36 Code.”

37 **The Commission invites comment on whether the restatement of this provision in**
38 **proposed Section 21450 would cause any substantive change in the meaning of the**
39 **provision.**

40 § 21455. Requirement to make catch available for inspection and sampling

41 21455. A fish retailer, upon request by an authorized agent or employee of the
42 department, shall immediately make available all fish in the retailer’s possession

1 for inspection and sampling by the agent or employee. Pursuant to Section 42110,
2 the fish retailer shall relinquish the head from any sampled salmon with a missing
3 adipose fin.

4 **Comment.** Section 21455 restates former Fish and Game Code Section 8043.2(c) without
5 substantive change.

6 **Note.** Proposed Section 21455 is intended to restate existing Fish and Game Code Section
7 8043.2(c) to clarify the meaning of that provision, without changing its substantive effect. The
8 existing provision reads as follows:

9 “8043.2. (c) A commercial fisherman selling his or her own catch to the ultimate customer,
10 upon request by an authorized agent or employee of the department, shall immediately make
11 available all fish in possession of the fisherman for inspection and sampling by the agent or
12 employee. Pursuant to Section 8226, the fisherman shall relinquish the head from any sampled
13 salmon with a missing adipose fin.”

14 **The Commission invites comment on whether the restatement of this provision in**
15 **proposed Section 21455 would cause any substantive change in the meaning of the**
16 **provision.**

17 TITLE 11. FISH PROCESSING

18 CHAPTER 1. GENERAL PROVISIONS

19 § 21600. Definitions

20 21600. As used in this title:

21 (a) “Reduction plant” means any plant used in the reduction or conversion of
22 fish into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products
23 or byproducts.

24 (b) “Packer” means any person canning fish or preserving fish by the common
25 methods of drying, salting, pickling, smoking, cold packing, or vacuum packing.

26 (c) “Fish offal” means the head, viscera, or other parts of fish taken off in
27 preparing for canning, preserving, packing, and preparing for consumption in a
28 fresh state.

29 **Comment.** Section 21600 continues former Fish and Game Code Section 7700(a)-(c) without
30 substantive change.

31 § 21605. Enforcement of title

32 21605. The commission may make and enforce any regulation that is necessary
33 or convenient for carrying out any power, authority, or jurisdiction conferred
34 under this title.

35 **Comment.** Section 21605 continues former Fish and Game Code Section 7708 without
36 substantive change.

37 § 21610. Commission regulation

38 21610. The commission may regulate and control fishing boats, barges, lighters
39 or tenders, receptacles or vehicles containing fish, commercial fishers, packers,

1 reduction plants, plants where fish products are manufactured, and dealers in fish
2 or fishery products, insofar as necessary to insure the taking and delivery of fish
3 and fishery products in a wholesome and sanitary condition to canning, packing or
4 preserving plants, or to any plant where fishery products are manufactured, or to
5 any fresh fish dealer, and to prevent deterioration and waste of fish.

6 **Comment.** Section 21610 continues former Fish and Game Code Section 7701 without
7 substantive change.

8 **§ 21615. Department inspection**

9 21615. The department may enter and examine any canning, packing,
10 preserving, or reduction plant, or place of business where fish or other fishery
11 products are packed, preserved, manufactured, bought or sold, or board any
12 fishing boat, barge, lighter, tender, or vehicle or receptacle containing fish, and
13 ascertain the amount of fish received, or kind and amount of fishery products
14 packed or manufactured and the number and size of containers or cans for fishery
15 products purchased, received, used, or on hand and may examine any books and
16 records containing any account of fish caught, bought, canned, packed, stored or
17 sold.

18 **Comment.** Section 21615 continues former Fish and Game Code Section 7702 without
19 change.

20 **§ 21620. Grading of fish by commission**

21 21620. The commission may establish grades for different varieties of fish or
22 fishery products, which shall be conformed to by all of the following persons or
23 entities:

24 (a) A person who takes or uses sardines for bait.

25 (b) A person who delivers fish or other fishery products to packers or to fresh
26 fish dealers.

27 (c) A packer of fish.

28 (d) A fish dealer.

29 (e) A manufacturer of fish products.

30 **Comment.** Section 21620 continues former Fish and Game Code Section 7703 without
31 substantive change.

32 **CHAPTER 2. REDUCTION PERMITS AND LICENSES**

33 **§ 21650. Authority of commission**

34 21650. The commission may grant a permit, subject to regulations it may adopt,
35 to take and use fish by a reduction or extraction process.

36 **Comment.** Section 21650 continues former Fish and Game Code Section 8075 without
37 substantive change.

38 **§ 21655. Required finding**

39 21655. No permit shall be issued except after a public hearing and a finding by

1 the commission that the granting of a permit would promote the economic
2 utilization of the fish resources of the state in the public interest. In making that
3 finding, the commission shall take into consideration the interest of the people of
4 the state in the utilization and conservation of the fish supply, and all economic
5 and other factors relating to that utilization and conservation, including the
6 efficient and economical operation of reduction plants.

7 **Comment.** Section 21655 continues former Fish and Game Code Section 8077 without
8 substantive change.

9 **§ 21660. Hearing**

10 21660. A hearing pursuant to this article shall be held within 30 days after
11 application for a permit, upon notice that the commission shall prescribe. The
12 commission may extend a hearing from time to time for a total period of not more
13 than 30 days.

14 **Comment.** Section 21660 continues former Fish and Game Code Section 8078 without
15 substantive change.

16 **§ 21665. Limit on number of permits**

17 21665. The commission shall, whenever necessary to prevent overexpansion,
18 insure the efficient and economical operation of reduction plants, or otherwise
19 carry out the provisions of this chapter, limit the total number of permits that are
20 granted.

21 **Comment.** Section 21665 continues former Fish and Game Code Section 8079 without
22 substantive change.

23 **§ 21670. License to dispose of dead or dying fish**

24 21670. Notwithstanding any other provision of this code or regulation adopted
25 pursuant to this code, the director or a representative appointed by the director,
26 may, without notice or a hearing, grant a license to a fish reduction plant to
27 dispose of dead or dying fish. The license may be immediately issued by the
28 director or the director's representative whenever that person determines, in that
29 person's discretion, that an emergency situation exists. The estimated tonnage to
30 be reduced shall be specified as a limit in the license.

31 **Comment.** Section 21670 continues former Fish and Game Code Section 8079.1 without
32 change.

33 **§ 21675. No limit on court authority**

34 21675. Nothing in this chapter restricts the power of any court in any proceeding
35 relating to any matter arising out of the provisions of this article.

36 **Comment.** Section 21675 continues former Fish and Game Code Section 8080 without
37 substantive change.

1 CHAPTER 3. VIOLATIONS

2 Article 1. Required Practices

3 **§ 21750. Containers to allow viewing of fish and fish offal**

4 21750. All chutes or conveyors used to convey fish or fish offal to any
5 receptacle, and all receptacles containing fish or fish offal to be used for reduction
6 purposes, shall be so constructed and maintained that the fish or fish offal is at all
7 times open to view and inspection.

8 **Comment.** Section 21750 continues former Fish and Game Code Section 7705 without
9 substantive change.

10 Article 2. Prohibitions

11 **§ 21800. Affirmative authorization of fish reduction required**

12 21800. Except as permitted by this code, it is unlawful to use a fish, except fish
13 offal, in a reduction plant or by a reduction process.

14 **Comment.** Section 21800 continues former Fish and Game Code Section 7704(b) without
15 change.

16 **§ 21805. Prohibited reduction**

17 21805. No reduction of fish is allowed that may tend to deplete a species, or
18 result in waste or deterioration of fish.

19 **Comment.** Section 21805 continues former Fish and Game Code Section 8076 without
20 substantive change.

21 **§ 21810. Unloading or weighing of specified fish**

22 21810. (a) No sardines, anchovies, mackerel, or squid intended for or used in
23 any cannery shall be unloaded from any vessel, except at a weighing or measuring
24 device approved by the Bureau of Weights and Measures.

25 (b) Those products shall be weighed by a public weighmaster licensed as an
26 individual under the laws of this state, and a receipt as to that weight shall be
27 immediately issued by the weighmaster to the commercial fisherman at the time of
28 receipt of the products.

29 (c) Copies of the receipt shall be handled in the manner provided in Chapter 3
30 (commencing with Section 21000) and Chapter 4 (commencing with Section
31 21200) of Title 10.

32 **Comment.** Section 21810 continues former Fish and Game Code Section 7702.1 without
33 substantive change.

Article 3. Enforcement

§ 21850. Prosecution of processing violation

21850. (a) A written complaint may be made to the commission against any person who violates any provision of this title, or any regulation adopted pursuant to any provision of this title, by any person having information or knowledge of the violation. If the person charged in the complaint is found guilty of the offense charged, the commission may suspend, for a period not to exceed 90 days, any license issued by any state board or officer to that person to take, buy, sell, can, or preserve fish or fishery products. No other license shall be issued to that person during the period of suspension.

(b) The proceedings on a complaint shall be conducted at one of the commission's regularly scheduled meetings.

Comment. Section 21850 restates former Fish and Game Code Section 7706 without substantive change.

Note. Proposed Section 21850 is intended to restate existing Fish and Game Code Section 7706 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

"7706. A written complaint may be made to the commission against any person who violates Section 7700 to 7705, inclusive, 7707, 7708, 8075 to 8080, inclusive, or 8153, or any regulation adopted thereunder, by any person having information or knowledge of the violation. If the person charged is found guilty of the offense charged, the commission may suspend, for a period not to exceed 90 days, any license issued by any state board or officer to that person to take, buy, sell, can, or preserve fish or fishery products. No other license shall be issued to that person during the period of suspension. The proceedings shall be conducted at one of the commission's regularly scheduled meetings."

The Commission invites comment on whether the restatement of this provision in proposed Section 21850 would cause any substantive change in the meaning of the provision.

§ 21855. Nuisance

21855. (a) Any reduction plant in which any fish is used in violation of any provision of this title, or in violation of any regulation of the commission, is a nuisance.

(b) Whenever the existence of a nuisance under subdivision (a) is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of the nuisance.

(c) If the existence of a nuisance is established in an action pursuant to subdivision (b), an order of abatement shall be entered as part of the judgment in the case, which shall direct the closing, for 12 months, of the building or place where the nuisance was maintained, and, during that time, the building or place shall be and remain in the custody of the court.

Comment. Section 21855 restates former Fish and Game Code Section 7707 without

substantive change. Nothing in this section precludes the application of the general law governing statutory nuisances. See Penal Code § 370; Civ. Code §§ 3479-3508.2.

The reference to a “part” of a fish in former Fish and Game Code Section 7707 is superfluous, and has been deleted. See Section 95 (reference to animal generally includes part of animal).

Note. Proposed Section 21855 is intended to restate existing Fish and Game Code Section 7707 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“7707. Any reduction plant in which any fish or any part thereof is used in violation of the provisions of Sections 7700 to 7706, inclusive, 7708, 8151, 8153 to 8157, inclusive, and 8075 to 8080, inclusive, of this code, or in violation of any regulation of the commission, is a nuisance. Whenever the existence of such nuisance is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of such nuisance. If the existence of a nuisance is established in such action, an order of abatement shall be entered as part of the judgment in the case, which order shall direct the closing, for 12 months, of the building or place where such nuisance was maintained, and, during such time, the building or place shall be and remain in the custody of the court.”

Proposed Section 21855 would replace the cross-references in the first sentence of Section 7707 with a reference to all provisions in the title in which proposed Section 21855 would be included. That replacement is based on the Commission’s belief that this title includes the continuation of all provisions cross-referenced in Section 7707, other than sections that have been repealed and not continued in substance in another provision.

The sections cross-referenced in Section 7707 that have been repealed read as follows:

8151. Sardines for use in a reduction plant, or by a packer, may be taken only in accordance with this article, and at the following times in the following places:

(a) In District 4,....

(b) Elsewhere in the State,....

8154. Any person engaged in canning sardines may take and use in a reduction plant 32 1/2 percent of the amount of sardines actually received at his canning plant during each calendar month.

8155. In determining the percentage of sardines that may be used for reduction purposes by a cannery, it shall be deemed that a ton of sardines suitable in size and condition for canning will produce 960 one-pound oval cans of sardines, or the equivalent if other size cans are used.

8156. A person engaged in preserving sardines by the common methods of drying, salting, smoking, or pickling may use in a reduction plant or by a reduction process such sardines, or fish delivered mixed with sardines, as are unfit for drying, salting, smoking, or pickling, which are not intentionally taken into the plant in a condition unfit for processing for human consumption.

8157. Fish which are mixed with sardines when delivered to the packer are the equivalent of sardines and shall be included within the percentage of the total amount of sardines received by the packer during the calendar month.

However, while the “Section 8154” set forth above that was in existence at the time Section 7707 was enacted was repealed in 1973, the Legislature enacted a new “Section 8154” in 1989, and *that* section remains an existing code section today. See 1988 Cal. Stat. ch. 858. That Section 8154 reads as follows:

“8154. No person shall receive, possess, or sell sardines for any purpose except for that purpose specified on the fish receipt completed at the time of landing of those sardines pursuant to Section 8043.”

Nevertheless, nothing in the legislative history of this enactment or the text of this provision suggests the Legislature intended or contemplated that this provision would be a cross-reference

in Section 7707, and proposed Section 21855 would also not include this provision as a cross-reference.

The Commission invites comment on whether the restatement of existing Section 7707 in proposed Section 15055 would cause any substantive change in the intended meaning of Section 7707.

TITLE 12. PASSENGER FISHING BOATS

§ 21900. Application of chapter

21900. This title applies only to a boat or vessel whose owner or his or her employee or other representative is with it when it is used for fishing.

Comment. Section 21900 continues the second paragraph of former Fish and Game Code Section 7920 without substantive change.

§ 21905. Activity requiring license

21905. (a) Except as provided in subdivision (b), owning a commercial passenger fishing boat requires a commercial passenger fishing boat license.

(b) Operating a guide boat does not require a commercial passenger fishing boat license.

Comment. Section 21905 restates the first and third paragraphs of former Fish and Game Code Section 7920 without substantive change.

Note. Proposed Section 21905 is intended to restate the first and third paragraphs of existing Fish and Game Code Section 7920 to clarify the meaning of those provisions, without changing their substantive meaning. The existing provisions read as follows:

“7920. The owner of any boat or vessel who, for profit, permits any person to take fish, shall procure a commercial passenger fishing boat license.

....

A person operating a guide boat, as defined in Section 46, is not required to obtain a commercial passenger fishing boat license.”

The Commission invites comment on whether proposed Section 21905 accurately continues the intended meaning of the first and third paragraphs of existing Section 7920.

§ 21910. Required commercial boat registration

21910. An applicant for a commercial passenger fishing vessel license is required to hold a commercial boat registration issued pursuant to Section 14755.

Comment. Section 21910 restates the second sentence of former Fish and Game Code Section 7921 without substantive change.

Note. Proposed Section 21910 is intended to restate the second sentence of existing Fish and Game Code Section 7921 to clarify the meaning of that provision, without changing its substantive meaning. The existing provision reads as follows:

“7921..... The commercial passenger fishing vessel license shall be issued to the holder of a commercial boat registration issued pursuant to Section 7881.”

The Commission invites comment on whether proposed Section 21910 accurately continues the intended meaning of the second sentence of existing Section 7921.

1 **§ 21915. License fee**

2 21915. The base fee for a commercial passenger fishing boat license is two
3 hundred fifty dollars (\$250) in the 2004 license year, which shall be adjusted
4 annually thereafter pursuant to Section 3755.

5 **Comment.** Section 21915 continues the first sentence of former Fish and Game Code Section
6 7921 without substantive change.

7 **Note.** Existing Fish and Game Code Section 7921 (which would be continued by proposed
8 Sections 21910 and 21915) refer to both a “commercial passenger fishing *boat* license” and a
9 “commercial passenger fishing *vessel* license.”

10 **The Commission invites comment on whether the terminology identifying this license can**
11 **be standardized.**

12 **§ 21920. Maintenance of records**

13 21920. (a) A commercial passenger fishing boat owner shall keep a true record
14 in the English language of all fish taken, and shall comply with all regulations that
15 the commission may adopt. The record and the information contained in it shall be
16 confidential, and the record shall not be a public record.

17 (b) Subdivision (a) does not apply to the taking, transporting, or selling of live
18 freshwater fish for bait.

19 **Comment.** Subdivision (a) of Section 21920 restates former Fish and Game Code Section
20 7923 without substantive change.

21 Subdivision (b) continues the part of the fourth paragraph of former Fish and Game Code
22 Section 8460 applicable to former Fish and Game Code Section 7923 without substantive change.

23 **Notes.** (1) Proposed Section 21920(a) is intended to restate existing Fish and Game Code
24 Section 7923 to clarify the meaning of that provision, without changing its substantive meaning.
25 The existing provision reads as follows:

26 “7923. The holder of a license shall keep a true record in the English language of all fish taken,
27 and shall comply with such regulations as the commission may prescribe. Such a record and the
28 information contained in it shall be confidential, and the record shall not be a public record.”

29 **The Commission invites comment on whether proposed Section 21930(a) accurately**
30 **continues the intended meaning of existing Section 7923.**

31 (2) The fourth paragraph of existing Fish and Game Code Section 8460 (which would be
32 continued in part by proposed Section 21920(b)) provides as follows (with italics added for
33 emphasis):

34 “The provisions of this code on commercial fishing, packing, or processing licenses, *on*
35 *reports by persons engaged in the commercial fish industry, and on statements required by*
36 *owners or operators of fishing boats*, do not apply to the taking, transporting, or selling of live
37 freshwater fish for bait.”

38 **The Commission invites comment on whether proposed Section 21920(b) correctly states**
39 **the application of the fourth paragraph of existing Section 8460 to existing Section 7923.**

40 **§ 21925. Forfeiture, suspension, or revocation of license**

41 21925. A license issued under this title is subject to forfeiture, suspension, or
42 revocation for a violation of Section 13600 or 13605, or for any offense for which
43 a commercial fishing license may be forfeited, suspended, or revoked.

44 **Comment.** Section 21925 continues former Fish and Game Code Section 7924 without

substantive change.

§ 21930. Fishing from commercial passenger fishing boat

21930. The owner or operator of a commercial passenger fishing boat shall not permit any person to fish from that boat without having in his or her possession a valid California sport fishing license if required, and any required stamp, report card, and validation issued pursuant to this code.

Comment. Section 21930 restates former Fish and Game Code Section 7147 without substantive change.

Note. Proposed Section 21930 is intended to restate existing Fish and Game Code Section 7147 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“7147. The owner or operator of a boat or vessel licensed pursuant to Section 7920 shall not permit any person to fish from that boat or vessel unless that person has, in his or her possession, a valid California sport fishing license and any required stamp, report card, or validation issued pursuant to this code.”

As stated, this section would seem to impose a license requirement on all persons fishing from a boat or vessel, even persons who are otherwise exempt from licensing requirements (e.g., a child under the age of 16). The Commission spoke informally with Department staff, who confirmed that existing Section 7147 is not understood to apply to those who are exempt from licensing requirements. Proposed Section 21930 would codify that understanding.

The Commission invites comment on whether proposed Section 21930 accurately states existing law.

§ 21935. Ocean fishing

21935. In addition to a valid California commercial passenger fishing boat license issued pursuant to Section 21905, the owner of any boat or vessel who, for profit, permits any person to fish from that boat or vessel, in ocean waters south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement validation issued for that vessel that has not been suspended or revoked.

Comment. Section 21935 continues former Fish and Game Code Section 6596.1(b) without substantive change.

§ 21940. License suspension for unlawful sale or purchase of fish

21940. In addition to any other applicable penalty, the commercial fishing license of the master of a commercial passenger fishing boat may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of that master, or upon conviction of a person acting as and in fact the master’s agent, servant, employee, or otherwise acting under the master’s direction or control, for a violation of Section 13600 or 13605, or a regulation adopted pursuant to either of those sections, if the fish in question were taken from that boat.

Comment. Section 21940 restates the former first and second paragraphs of Fish and Game Code Section 12002.7 without substantive change. Principles of collateral estoppel may have application to a license revocation or suspension proceeding under this section. *Cf.* *People v.*

Sims, 32 Cal. 3d 468, 651 P.2d 321, 186 Cal. Rptr. 77 (1982) (welfare fraud), Gikas v. Zolin, 6 Cal. 4th 841, 863 P.2d 745, 25 Cal. Rptr. 2d 500 (1993) (driving under the influence).

Notes. (1) Proposed Section 21940 is intended to restate the first and second paragraphs of existing Fish and Game Code Section 12002.7 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“12002.7. Notwithstanding Sections 12000, 12001, and 12002, the commercial fishing license of the master of a vessel may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of the master or his agent, servant, employee, or person acting under his direction or control, for a violation of Section 7121 or the regulations adopted pursuant thereto, if the fish in question were taken from a vessel licensed pursuant to Section 7920.

However, a master’s license shall not be revoked for the conviction of a violation occurring when the person convicted was not acting as the master’s agent, servant, employee, or acting under his direction or control.”

The Commission invites comment on whether proposed Section 21935 accurately continues the intended meaning of existing Section 12002.7.

(2) Existing Section 12002.7 (which would be continued by proposed Section 21940) provides for the revocation or suspension of the commercial fishing license of the master of a commercial passenger fishing boat, based on a passenger violating other specified law involving fish taken from that boat.

Existing Section 12002.4 (which would be continued by proposed Section 21945) provides for the revocation or suspension of the commercial boat registration of a commercial passenger fishing boat, based on very similar conduct. However, there are some discrepancies between the two sections that may not have been intended:

- Section 12002.7 applies only when fish are taken, whereas Section 12002.4 expressly applies when fish or amphibia are taken. Although the existing generally applicable definition of the term “fish” does include amphibians (see existing Section 45), an inference could be drawn that Section 12002.7 does not apply when amphibians are taken, based on the express inclusion of a reference to amphibians, only in Section 12002.4.

- A revocation or suspension under Section 12002.7 may be imposed based on the conduct of any person acting under the master’s direction or control. A revocation or suspension under Section 12002.4 also may be imposed based on the conduct of any person under the registrant’s direction or control, but a revocation or suspension under Section 12002.4 also requires, in that event, that the master of the vessel, or an agent or employee of the registrant, have had knowledge of the commission of the violation resulting in the conviction.

The Commission invites comment on whether these discrepancies should be reconciled.

§ 21945. Commercial boat registration suspension for unlawful sale or purchase of fish

21945. (a) In addition to any other applicable penalty, the commercial boat registration of a commercial passenger fishing boat may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of the registrant, or the registrant’s agent, servant, employee, or any other person acting under the registrant’s direction or control, for a violation of Section 13600 or 13605, or a regulation adopted pursuant to that section, if the violation in question involves that boat.

(b) In addition to any other applicable penalty, the commercial boat registration of a commercial passenger fishing boat may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of any person other than a person specified in subdivision

(a), for a violation of Section 13600 or 13605, if the fish or amphibians involved in the violation were taken from that boat, and the person committing the violation had committed a prior violation of Section 13600 or 13605 involving that boat within the previous three years.

(c) A commercial boat registration shall not be revoked under this section for a violation committed without the knowledge of the master, or an agent or employee of the registrant.

Comment. Section 21945 restates former Fish and Game Code Section 12002.4 without substantive change. Principles of collateral estoppel may have application to a license revocation or suspension proceeding under this section. *Cf. People v. Sims*, 32 Cal. 3d 468, 651 P.2d 321, 186 Cal. Rptr. 77 (1982) (welfare fraud), *Gikas v. Zolin*, 6 Cal. 4th 841, 863 P.2d 745, 25 Cal. Rptr. 2d 500 (1993) (driving under the influence).

Note. Proposed Section 21945 is intended to restate existing Fish and Game Code Section 12002.4 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“12002.4. (a) Notwithstanding Sections 12000, 12001, and 12002, a commercial boat registration may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of the registrant, or the registrant’s agent, servant, employee, or any other person acting under the registrant’s direction or control, for a violation of Section 7121 or the regulations adopted pursuant thereto, if the violation in question involved a vessel licensed pursuant to Section 7920.

(b) Notwithstanding Sections 12000, 12001, and 12002, a commercial boat registration of a vessel licensed pursuant to Section 7920 may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon conviction of any other person for a violation of Section 7121, if the fish or amphibia involved in the violation were taken from the vessel and that person committed a prior violation of Section 7121 within three years on the vessel.

(c) The commercial boat registration shall not be revoked under this section for a violation which is unrelated to the vessel for which the commercial boat registration is to be revoked. Any violation committed without the knowledge of the master, or an agent or employee of the registrant, is unrelated to the vessel.”

The Commission invites comment on whether proposed Section 21945 accurately continues the intended meaning of existing Section 12002.4.

§ 21950. Possession limit for specified fish

21950. No commercial fisherman, while on any barge or boat which for hire carries any sport fisherman, may take or have in his or her possession in any one day, more than the aggregate number of the following kinds of fish permitted in the case of sport fishing: bluefin tuna, yellowfin tuna, skipjack, yellowtail, marlin, broadbill swordfish, black seabass, albacore, barracuda, white seabass, bonito, rock bass, kelp bass, California halibut, California corbina, yellowfin croaker, and spotfin croaker.

Comment. Section 21950 continues former Fish and Game Code Section 8385 without substantive change.

1 TITLE 13. LIVE FRESHWATER FISH FOR BAIT

2 § 22100. When license required

3 22100. (a) The take, transport, or sale, for profit, of live freshwater fish for bait
4 requires a live freshwater bait fish license. The commission may adopt regulations
5 governing these licenses.

6 (b) A live freshwater bait fish license is not required for the raising, possession,
7 or sale of live freshwater fish for bait under authority of Part 1 (commencing with
8 Section 23300) of Division 7.

9 **Comment.** Subdivision (a) of Section 22100 restates the first paragraph of former Fish and
10 Game Code Section 8460 without substantive change.

11 Subdivision (b) continues the third paragraph of former Fish and Game Code Section 8460
12 without substantive change.

13 **Note.** Proposed Section 22100(a) is intended to restate the first paragraph of existing Fish and
14 Game Code Section 8460 to clarify the meaning of that provision, without changing its
15 substantive effect. The existing provision reads as follows:

16 “Any person engaged for profit in the taking, transporting, or selling of live fresh-water fish for
17 bait shall first obtain from the department a live fresh-water bait fish license to possess the fish
18 for those purposes. The commission may prescribe regulations governing these licenses.”

19 **The Commission invites comment on whether proposed Section 22100 accurately**
20 **continues the intended meaning of the first paragraph of existing Section 8460.**

21 § 22105. Term of license

22 22105. A live freshwater bait fish license shall be issued for a calendar year, or,
23 if issued after the beginning of the year, for the remainder of the year.

24 **Comment.** Section 22105 continues a part of the second paragraph of former Fish and Game
25 Code Section 8460 without substantive change.

26 § 22110. License fee

27 22110. The annual fee for a live freshwater bait fish license is fifty-five dollars
28 (\$55).

29 **Comment.** Section 22110 continues former Fish and Game Code Section 8461 without
30 substantive change.

31 § 22115. Revocation of license

32 22115. A live freshwater bait fish license may be revoked for a violation of the
33 terms of the license.

34 **Comment.** Section 22115 continues a part of the second paragraph of former Fish and Game
35 Code Section 8460 without substantive change.

36 § 22120. Take only of permitted species

37 22120. (a) A live freshwater bait fish license shall authorize the taking of only
38 golden shiners, fathead minnows, and any other species the department may
39 designate, under regulations adopted by the commission.

(b) The commission may prohibit in any part or all parts of the state the possession alive of any species of fish that the commission considers a potential threat to the fisheries of the state by reason of possible escape and establishment.

Comment. Section 22120 continues former Fish and Game Code Section 8462 without substantive change.

§ 22125. Restriction on gear used to take certain species

22125. Traps not over 24 inches in greatest length nor more than 12 inches in greatest depth or width, or seines of not over 1/2-inch mesh stretched measure and not more than 4 x 30 feet in size, may be used for the taking of fish of the carp and minnow family (family Cyprinidae), suckers (family Catostomidae), sculpins (family Cottidae), or mosquito fish (genus Gambusia). Such traps may be used only in lakes and impounded waters. Such seines may be used only in lakes, impounded waters, and conduits.

(b) Fish taken as provided in this section may be sold only as bait.

(c) Fish other than those named in this section that may be taken in a trap or seine described in this section shall be released and returned unharmed to the water where taken.

Comment. Section 22125 continues former Fish and Game Code Section 8463 without substantive change.

TITLE 14. COMMERCIAL FISHING REPORTS

§ 22200. Required record of fishing activities

22200. (a) Except as provided in subdivision (c), the commission may require the owner and operator of a commercial fishing vessel, a commercial fisherman, and a commercial passenger fishing boat owner, to keep and submit a complete and accurate record of fishing activities in a form prescribed by the department.

(b) In addition to the penalty specified in subdivision (a) of Section 4400, failure to keep and submit records pursuant to subdivision (a) may result in the revocation or suspension of a license or permit by the department, or by the commission when recommended by the department, for a period not to exceed one year.

(c) This section does not apply to the taking, transporting, or selling of live freshwater fish for bait.

Comment. Subdivisions (a) and (b) of Section 22200 restate former Fish and Game Code Section 8026 without substantive change.

Subdivision (c) continues the part of the fourth paragraph of former Fish and Game Code Section 8460 applicable to former Fish and Game Code Section 8026 without substantive change.

Notes. (1) Proposed Section 22200(a) and (b) are intended to restate existing Fish and Game Code Section 8026 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“8026. (a) The commission may require the owner and operator of a commercial fishing vessel, the holder of a commercial fishing license or permit, and the owner and licenseholder of a

commercial passenger fishing boat to keep and submit a complete and accurate record of fishing activities in a form prescribed by the department.

(b) In addition to the penalty specified in subdivision (a) of Section 12002, failure to keep and submit records pursuant to subdivision (a) may result in the revocation or suspension of a license or permit by the department or the commission, when recommended by the department, for a period not to exceed one year.”

The Commission invites comment on whether proposed Section 22200(a) and (b) accurately continues the intended meaning of existing Section 8026.

(2) The last paragraph of existing Fish and Game Code Section 8460 (which would be continued in part by proposed Section 22200(c)) provides as follows (with emphasis added):

“The provisions of this code on *commercial fishing*, packing, or processing licenses, on reports by persons engaged in the commercial fish industry, *and on statements required by owners or operators of fishing boats*, do not apply to the taking, transporting, or selling of live fresh-water fish for bait.”

The Commission invites comment on whether proposed Section 22200(b) correctly states the application of the last paragraph of existing Section 8460 to existing Section 8026.

§ 22205. Confidentiality of department records

22205. (a) The receipts, reports, or other records filed with the department pursuant to Title 1 (commencing with Section 14200), Title 2 (commencing with Section 14500), Title 9 (commencing with Section 20200), Title 10 (commencing with Section 20900), Title 11 (commencing with Section 21600), Title 12 (commencing with Section 21900), this title, Chapter 5 (commencing with Section 22800) of Title 15, Chapter 2 (commencing with Section 41350) of Title 2 of Part 17 of Division 10, Sections 42100 and 46150, and the information contained therein, shall, except as otherwise provided in this section, be confidential, and the records shall not be public records. Insofar as possible, the information contained in the records shall be compiled or published as summaries, so as not to disclose the individual record or business of any person.

(b) Notwithstanding any other provision of law, the department may release the confidential information described in subdivision (a) to any federal agency responsible for fishery management activities, provided the information is used solely for the purposes of enforcing fishery management provisions and provided the information will otherwise remain confidential. The department may also release this information in accordance with Section 5050 or pursuant to a court order, to a public or private postsecondary institution engaged in research under the terms of a legally binding confidentiality agreement, or under other conditions as the commission by regulation may provide.

(c) All forms, logs, books, covers, documents, electronic data, software, and other records of any kind issued or otherwise supplied, directly or indirectly, by the department, the purpose of which is to provide a means for reports, records, or other information to be filed with the department pursuant to Title 1 (commencing with Section 14200), Title 2 (commencing with Section 14500), Title 9 (commencing with Section 20200), Title 10 (commencing with Section 20900), Title 11 (commencing with Section 21600), Title 12 (commencing with Section

21900), this title, Chapter 5 (commencing with Section 22800) of Title 15, Chapter 2 (commencing with Section 41350) of Title 2 of Part 17 of Division 10, Sections 42100 and 46150, continue to be the property of the department. Those forms, logs, books, covers, documents, electronic data, software, other records, and any portion of any of those items remain the property of the department, whether used, unused, attached, or detached from their original binding, packaging, or other medium and shall be immediately surrendered upon demand to a peace officer of the department acting in his or her official capacity, without being altered in any manner.

Comment. Section 22205 continues former Fish and Game Code Section 8022 without substantive change.

§ 22210. Compilation of reports by department

22210. The department shall do all of the following:

(a) Gather and prepare data of the commercial fisheries, showing particularly the extent of the fisheries and the extent to which the various species abound.

(b) Make such investigations of the biology and the environment of the living marine resources as will aid in the collection and preparation of the statistical information necessary to determine the population dynamics of the species relative to their scientific management.

(c) Make such investigations as will disclose the optimum sustainable yield of the various marine resources.

(d) Determine what measures may be advisable to conserve any fishery, or to enlarge and assist any fishery, where that may be done without danger to the supply.

Comment. Section 22210 continues former Fish and Game Code Section 8010 without substantive change.

§ 22215. Suspension or revocation of commercial fishing license or privileges

22215. The commission, upon recommendation of the department, may suspend or revoke the commercial fishing privileges of any commercial fisherman, or the license of any person required to be licensed under Title 9 (commencing with Section 20200), who is convicted of a violation of this title.

Comment. Section 22215 continues the part of former Fish and Game Code Section 8025(a) applicable to violations of Article 6 (commencing with Fish and Game Code Section 8010) of Chapter 1 of Part 3 of Division 6 of the former Fish and Game Code without substantive change.

TITLE 15. COMMERCIAL FISHERIES

CHAPTER 1. MAGNUSON-STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT

Article 1. General Provisions

§ 22300. Defined terms

22300. As used in this title:

(a) “Act” means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.).

(b) “Council” means the Pacific Fishery Management Council established pursuant to the act, or its successor agency.

(c) “Fishery” has the same meaning as defined in Section 1802(13) of Title 16 of the United States Code.

(d) “Joint committee” means the Joint Committee on Fisheries and Aquaculture created pursuant to Resolution Chapter 88 of the Statutes of 1981.

(e) “Optimum,” with respect to the yield from a fishery, has the same meaning as defined in Section 1802(28) of Title 16 of the United States Code.

(f) “Secretary” means the federal Secretary of Commerce.

Comment. Section 22300 continues former Fish and Game Code Section 7650 without substantive change.

§ 22305. Declaration of legislative findings

22305. The Legislature finds and declares:

(a) That the actions taken by the federal Pacific Fishery Management Council have resulted in significant economic losses to California’s salmon and groundfish fisheries, have caused significant waste of fish, and have failed to manage and conserve fisheries for their optimum yield.

(b) That the California Salmon Fishery has been severely affected by regulations imposed by the Pacific Fishery Management Council and the federal Department of Commerce.

(c) That the membership of the Pacific Fishery Management Council has never included a commercial salmon troll fisherman, and has at times lacked balance and representation from major fisheries subject to the fishery management plans of the council.

Comment. Section 22305 continues former Fish and Game Code Section 7654 without substantive change.

§ 22310. Declaration of policy

22310. (a) It is the policy of the state that it be represented on the Pacific Fishery Management Council by people who are knowledgeable about fisheries directly subject to the fishery management plans of the council. Nominations and

1 appointments to the Pacific Fishery Management Council shall be a balanced
2 representation of interested parties, including, but not limited to, representatives
3 from the commercial salmon troll fishery, the groundfish fishery, the coastal
4 pelagic species fishery, the seafood processing industry, the commercial passenger
5 carrying fishing industry, nongovernmental environmental organizations, and
6 marine scientists.

7 (b) When the Governor nominates persons for any seat on the Pacific Fishery
8 Management Council, those individuals shall be knowledgeable of California's
9 fishery resources and its fishing industry. Further, the nominations may be made
10 after consultation with fishery organizations and other interested parties, including
11 parties representing the public's interest in the fishery resources and marine
12 environment.

13 **Comment.** Section 22310 continues former Fish and Game Code Section 7655 without
14 substantive change.

15 **§ 22315. Inapplicability of Administrative Procedure Act**

16 22315. Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of
17 the Government Code does not apply to this title.

18 **Comment.** Section 22315 continues former Fish and Game Code Section 7652(d) without
19 substantive change.

20 **Article 2. Adoption of New Regulations**

21 **§ 22400. Required public hearing**

22 22400. (a) Notwithstanding any other section of this title or any other law, the
23 director shall hold a public hearing or hearings in the area of the fishery under
24 consideration after a recommendation by the council to the secretary of a fishery
25 management plan or amendment of a fishery management plan pursuant to the act,
26 or after approval by the secretary of a fishery management plan or amendment of a
27 fishery management plan pursuant to the act.

28 (b) If the secretary approves a fishery management plan or amendment of a
29 fishery management plan that is substantially identical to a fishery management
30 plan or amendment of a fishery management plan that has been recommended by
31 the council, and the director has held a public hearing on the council's
32 recommended fishery management plan or amendment of a fishery management
33 plan, the director is not required to hold a second public hearing under this section
34 after the approval by the secretary.

35 (c) The hearing shall be held not less than four days after the recommendation
36 by the council to the secretary of a fishery management plan or amendment of a
37 fishery management plan, or after the approval by the secretary of a fishery
38 management plan or amendment of a fishery management plan. The director shall
39 arrange the time and place of the hearing, shall provide adequate public notice and
40 adequate notice to the appropriate standing policy committee of each house of the

1 Legislature and to the joint committee, and shall convene the hearing at the time
2 and place arranged.

3 (c) At the hearing or hearings, the director shall take evidence of the effects any
4 proposed regulation would have on the state's fishery resources, the commercial or
5 recreational fishing industry, and the state's ability to manage fishery resources in
6 waters of the state.

7 (d) After the hearings, the director shall submit a written report to the
8 Legislature that summarizes the reasons for the proposed regulation.

9 (e) The report to the Legislature shall be delivered or placed in the United States
10 Postal Service addressed to the Chairperson of the Joint Committee on Fisheries
11 and Aquaculture and to the chairperson of the appropriate policy committee of
12 each house of the Legislature.

13 **Comment.** Subdivisions (a) through (d) of Section 22400 continue former Fish and Game
14 Code Section 7652.1 without substantive change.

15 Subdivision (e) continues the part of former Fish and Game Code Section 7652.3(b) applicable
16 to former Fish and Game Code Section 7652.1 without change.

17 **§ 22405. Adoption of regulations to conform state law**

18 22405. Upon the preparation by the council, and the recommendation by the
19 council to the secretary, of a fishery management plan or amendment of a fishery
20 management plan pursuant to the act, or upon the approval by the secretary of a
21 fishery management plan, or amendment of a fishery management plan, pursuant
22 to the act, the director may do any of the following to conform state law or
23 regulations of the commission to the fishery management plan, or amendment of a
24 fishery management plan, if the director finds that the action is necessary to
25 achieve optimum yield in California, and that it is necessary to avoid a substantial
26 and adverse effect on the plan by that state law or the regulations in order to
27 continue state jurisdiction pursuant to Section 1856 of the act:

28 (a) Adopt regulations that would make inoperative any statute or regulation of
29 the commission, including, but not limited to, statutes or regulations regulating
30 bag limits, methods of taking, and seasons for taking of fish for commercial
31 purposes.

32 Any regulation adopted by the director pursuant to this subdivision shall specify
33 the particular statute or regulation of the commission to be inoperative.

34 (b) Adopt regulations governing phases of the taking of fish for commercial
35 purposes that are not presently regulated by statute or regulation of the
36 commission.

37 (c) Adopt regulations governing phases of the taking of fish for commercial
38 purposes that are presently regulated by statute or regulation of the commission,
39 but only if the statutes or regulations are first made inoperative pursuant to
40 subdivision (a) for the effective period of the regulations adopted by the director
41 pursuant to this subdivision.

42 **Comment.** Section 22405 combines and continues former Fish and Game Code Section
43 7652(a)-(c) without substantive change.

1 **§ 22410. Hearing and report to Legislature prerequisite to adoption of regulation**

2 22410. The director shall not adopt any regulation pursuant to this chapter until
3 the director has held one or more hearings, and submitted a report to the
4 Legislature, pursuant to Section 22400.

5 **Comment.** Section 22410 continues the part of former Fish and Game Code Section 7652.3(a)
6 applicable to adoption of regulations under former Fish and Game Code Section 7652.1 without
7 substantive change.

8 **§ 22415. Report to Legislature of need to conform state law**

9 22415. Upon the adoption of any regulation pursuant to Section 22405, the
10 director shall report to the Legislature which statutes or regulations of the
11 commission need to be amended or repealed, and any regulations adopted by the
12 director that need to be enacted as statutes, to conform state law to any fishery
13 management plan, or amendment of a fishery management plan, that has been
14 approved by the secretary, to avoid any substantial and adverse effect on such plan
15 or amendment by that state law.

16 **Comment.** Section 22415 continues former Fish and Game Code Section 7653 without
17 substantive change.

18 Article 3. Repeal or Amendment of Regulations

19 **§ 22450. Amendment or repeal of regulation by director**

20 22450. (a) The director may repeal or amend any regulation adopted pursuant to
21 Section 22405, or any other regulation, to conform the regulation to federal
22 regulations pursuant to the act, if the director finds that this action is necessary to
23 achieve optimum yield in California.

24 (b) Notwithstanding any other section of this title or any other law, the director
25 shall hold a public hearing or hearings in the area of the fishery under
26 consideration before the director repeals or amends any regulation pursuant to this
27 section. The director shall arrange the time and place of the hearing or hearings,
28 shall provide adequate public notice and adequate notice to the appropriate
29 standing policy committee of each house of the Legislature and to the joint
30 committee, and shall convene the hearing or hearings at the time and place
31 arranged.

32 (c) At the hearing or hearings, the director shall take evidence of the effects the
33 proposed repeal or amendment would have on the state's fishery resources, the
34 commercial or recreational fishing industry, and the state's ability to manage
35 fishery resources in waters of the state.

36 (d) After the hearing or hearings, the director shall submit a written report to the
37 Legislature that summarizes the reasons for the proposed repeal or amendment.

38 (e) The report to the Legislature shall be delivered or placed in the United States
39 Postal Service addressed to the Chairperson of the Joint Committee on Fisheries

1 and Aquaculture and to the chairperson of the appropriate policy committee of
2 each house of the Legislature.

3 **Comment.** Subdivisions (a) through (d) of Section 22450 continue former Fish and Game
4 Code Section 7652.2 without substantive change.

5 Subdivision (e) continues the part of former Fish and Game Code Section 7652.3(b) applicable
6 to former Fish and Game Code Section 7652.2 without change.

7 **§ 22455. Hearing and report to Legislature prerequisite to amendment or repeal of**
8 **regulation**

9 22455. The director shall not amend or repeal any regulation pursuant to this
10 chapter until the director has held one or more hearings, and submitted a report to
11 the Legislature, pursuant to Section 22450.

12 **Comment.** Section 22455 continues the part of former Fish and Game Code Section 7652.3(a)
13 applicable to amendment or repeal of regulations under former Fish and Game Code Section
14 7652.2 without substantive change.

15 CHAPTER 2. LIMITED ENTRY FISHERIES

16 **§ 22500. Eligibility**

17 22500. (a) Any commercial fisherman shall be eligible for inclusion during the
18 initial year of a limited entry fishery established by statute that becomes operative
19 after January 1, 1982, or by regulation that becomes operative after January 1,
20 1999, regardless of the prescribed conditions for entry into the fishery, if the
21 commercial fisherman presents to the department satisfactory evidence that he or
22 she has been licensed as a California commercial fisherman for at least 20 years
23 and has participated in the fishery for at least one of those 20 years, with
24 qualifying participation in the fishery to be determined by the commission based
25 on landings or other appropriate criteria.

26 (b) Commercial fishers who have established eligibility to participate in a
27 limited entry fishery under this section are subject to conditions of continuing
28 eligibility established by statute or regulation if those fishers desire to maintain
29 their eligibility.

30 **Comment.** Section 22500 continues former Fish and Game Code Section 8101 without
31 substantive change.

32 **§ 22505. Partnerships**

33 22505. (a) The Legislature finds and declares that, in some limited entry
34 fisheries, two or more partners may be operating with one of the partners holding
35 the permit to participate in the fishery. The Legislature further finds and declares
36 that undocumented, de facto, family partnerships are a longstanding custom in
37 these fisheries. The Legislature further finds and declares that great hardship
38 results when the permittee partner is no longer able to continue working and
39 leaves the other partner without a permit to continue participating in the fishery.

1 (b) In any limited entry fishery in which permits are allocated to participants in
2 the fishery, and where the death, incapacity, or retirement of a permittee from that
3 fishery would deprive a working partner of the permittee of the ability to continue
4 to derive a livelihood from that fishery, a permit shall be issued, upon application,
5 to one remaining partner.

6 (c) A working partner for the purposes of this section shall be a spouse, child
7 (including an adopted child), or sibling of the permittee, whose investment or
8 equity need not be proven by documentation, or a person who can prove an
9 investment or equity in the vessel or gear used in the fishery, and who would
10 otherwise have been eligible for a permit and did not obtain one because he or she
11 was working with or was a partner with the permittee.

12 (d) The working partner shall also provide substantial evidence of an actual
13 physical working participation aboard the vessel supported by the submission of
14 documents filed with the Franchise Tax Board and supported by trip settlement
15 sheets or similar documents that demonstrate earnings from that participation.
16 "Trip settlement sheet" for purposes of this subdivision means a document
17 prepared after a vessel has completed a fishing trip which displays the costs
18 incurred, revenues received, and profits paid out. Investment or equity alone does
19 not establish that the person is a working partner.

20 (e) Those existing working partners other than the family relationships specified
21 in subdivision (c) may, not later than February 1, 1984, declare and prove the
22 working partnership in a manner satisfactory to the department and request that the
23 department state the fact of the working partnership upon the permit. Thereafter, a
24 nonfamily working partnership shall be declared, proved, and noted upon any
25 limited entry permit at the first issuance of the permit.

26 (f) This article does not apply to permits to take herring for roe in California.

27 **Comment.** Section 22505 continues former Fish and Game Code Section 8102 without
28 substantive change.

29 **§ 22510. Accidental death of permittee**

30 22510. (a) The Legislature finds and declares as follows:

31 (1) The accidental death of a limited entry permittee results in great hardships on
32 the permittee's family.

33 (2) Under the law as it existed immediately prior to January 1, 1987, if a
34 member of the permittee's family has not been actively working in the fishery, the
35 limited entry permit could not be transferred to a member of the family, an action
36 which deprives the family of the opportunity to continue to derive a livelihood
37 from the fishery and which imposes greater hardships.

38 (3) When there is an accidental death of a limited entry permittee, a transition
39 period is necessary to allow a family member to join the fishery and to become
40 acclimated, knowledgeable, and experienced in the fishery.

41 (b) Notwithstanding Section 22505, the department shall transfer a permit for a
42 limited entry fishery, upon application, to a parent, spouse, child, or sibling of a

1 permittee whose death was the result of an accident that occurred after January 1,
2 1986.

3 (c) Application for the transfer of a permit pursuant to subdivision (b) shall be
4 made on or before January 1, 1987, or not more than one year after the death of
5 the permittee, whichever is later.

6 (d) The director may authorize another person, when requested by the new
7 permittee, to serve in the place of the new permittee and to engage in fishing
8 activities under the authority of the limited entry permit for not more than two
9 years from the date of the permit transfer.

10 (e) “Accidental death” means death resulting directly and solely from any of the
11 following:

12 (1) An accidental injury visible on the surface of the body or disclosed by an
13 autopsy, sustained solely by external, violent, and accidental means.

14 (2) A disease or infection resulting directly from an accidental injury and
15 beginning within 30 days after the date of the injury.

16 (3) An accidental drowning.

17 **Comment.** Section 22510 continues former Fish and Game Code Section 8103 without
18 substantive change.

19 **§ 22515. Transfer of permit of deceased permittee**

20 22515. (a) Upon the death of a limited entry permittee, the permit shall vest in
21 the permittee’s estate or in the surviving community estate, and may be transferred
22 by the executor, administrator, personal representative, or surviving spouse to a
23 qualified pointholder pursuant to Section 40380 or to a partner qualified pursuant
24 to Section 40375.

25 (b) The transfer shall be initiated by notice to the department, in writing, sent by
26 certified mail, within one year of the date of death.

27 (c) If no transfer is initiated within one year of the date of death, the permit shall
28 revert to the department for disposition pursuant to Section 40395 and shall be
29 thereafter treated as a herring permit that has not been renewed.

30 (d) The department may, upon written application, grant an extension of time up
31 to one additional year for the transfer to be initiated.

32 **Comment.** Section 22515 continues former Fish and Game Code Section 8104 without
33 substantive change.

34 **Note.** Existing Fish and Game Code Section 8104 (which would be continued by proposed
35 Section 22510) appears to apply to the permit of *any* deceased limited entry permittee, but
36 provides for a transfer of that permit only to a person qualified to operate in a *herring* fishery.

37 **The Commission invites comment on whether proposed Section 22510 was intended to**
38 **apply upon the death of a herring fishery permittee, and should be revised and relocated in**
39 **the proposed law accordingly.**

CHAPTER 3. NEARSHORE FISHERIES MANAGEMENT ACT

§ 22600. Name

22600. This chapter shall be known and may be cited as the Nearshore Fisheries Management Act.

Comment. Section 22600 continues former Fish and Game Code Section 8585 without substantive change.

§ 22605. Legislative declaration

22605. The Legislature finds and declares that important commercial and recreational fisheries exist on numerous stocks of rockfish (genus *Sebastes*), California sheephead (genus *Semicossyphus*), kelp greenling (genus *Hexagrammos*), cabezon (genus *Scorpaenichthys*), and scorpionfish (genus *Scorpaena*), in the nearshore state waters extending from the shore to one nautical mile offshore the California coast, that there is increasing pressure being placed on these fish from recreational and commercial fisheries, that many of these fish species found in the nearshore waters are slow growing and long lived, and that, if depleted, many of these species may take decades to rebuild. The Legislature further finds and declares that, although extensive research has been conducted on some of these species by state and federal governments, there are many gaps in the information on these species and their habitats and that there is no program currently adequate for the systematic research, conservation, and management of nearshore fish stocks and the sustainable activity of recreational and commercial nearshore fisheries. The Legislature further finds and declares that recreational fishing in California generates funds pursuant to the Federal Aid in Sport Fish Restoration Act (16 U.S.C. Secs. 777 to 777l, inclusive), with revenues used for, among other things, research, conservation, and management of nearshore fish. The Legislature further finds and declares that a program for research and conservation of nearshore fish species and their habitats is needed, and that a management program for the nearshore fisheries is necessary. The Legislature further finds and declares that the commission should be granted additional authority to regulate the commercial and recreational fisheries to assure the sustainable populations of nearshore fish stocks. Lastly, the Legislature finds and declares that, whenever feasible and practicable, it is the policy of the state to assure sustainable commercial and recreational nearshore fisheries, to protect recreational opportunities, and to assure long-term employment in commercial and recreational fisheries.

Comment. Section 22605 continues former Fish and Game Code Section 8585.5 without change.

§ 22610. Definitions

22610. The following definitions govern the construction of this chapter:

(a) “Nearshore fish stocks” means any of the following: rockfish (genus *Sebastes*) for which size limits are established under this article, California sheephead (*Semicossyphus pulcher*), greenlings of the genus *Hexagrammos*, cabezon (*Scorpaenichthys marmoratus*), scorpionfish (*Scorpaena guttata*), and may include other species of finfish found primarily in rocky reef or kelp habitat in nearshore waters.

(b) “Nearshore fisheries” means the commercial or recreational take or landing of any species of nearshore finfish stocks.

(c) “Nearshore waters” means the ocean waters of the state extending from the shore to one nautical mile from land, including one nautical mile around offshore rocks and islands.

Comment. Section 22610 continues former Fish and Game Code Section 8586 without substantive change.

§ 22615. Funding

22615. Funding to prepare the plan pursuant to Section 12320, and for any planning and scoping meetings, shall be derived from moneys deposited in the Fish and Game Preservation Fund pursuant to Section 22630 and other funds appropriated for those purposes.

Comment. Section 22615 continues former Fish and Game Code Section 8589 without substantive change.

§ 22620. Adoption of regulations

22620. (a) The commission may adopt regulations as it determines necessary, based on the advice and recommendations of the department, to regulate nearshore fish stocks and fisheries. Regulations adopted by the commission pursuant to this section may include, but are not limited to, requiring submittal of landing and permit information, including logbooks; establishing a restricted access program; establishing permit fees; and establishing limitations on the fishery based on time, area, type, and amount of gear, and amount of catch, species, and size of fish.

(b) Regulations adopted by the commission pursuant to this section may make inoperative any fishery management statute relevant to the nearshore fishery. Any regulation adopted by the commission pursuant to this subdivision shall specify the particular statute to be made inoperative.

(c) The circumstances, restrictions, and requirements of Section 1025 do not apply to regulations adopted pursuant to this section.

(d) Any regulations adopted pursuant to this section shall be adopted following consultation with fishery participants and other interested persons consistent with Section 12165.

Comment. Section 22620 continues former Fish and Game Code Section 8587.1 without substantive change.

1 **§ 22625. Costs of act**

2 22625. Funding to pay the costs of this chapter shall be made available from the
3 revenues deposited in the Fish and Game Preservation Fund pursuant to Sections
4 22630, 22635, and 22640, and other funds appropriated for these purposes.

5 **Comment.** Section 22625 continues former Fish and Game Code Section 8586.1 without
6 substantive change.

7 **§ 22630. Required permit**

8 22630. (a) Any person taking, possessing aboard a boat, or landing any species
9 of nearshore fish stock for a commercial purpose shall possess a valid nearshore
10 fishery permit issued to that person that has not been suspended or revoked, except
11 that when using a boat to take nearshore fish stocks at least one person aboard the
12 boat shall have a valid nearshore fishery permit.

13 (b) Nearshore fishing permits are revocable.

14 (c) The fee for a nearshore fishing permit is one hundred and twenty five dollars
15 (\$125).

16 **Comment.** Section 22630 continues former Fish and Game Code Section 8587 without
17 substantive change.

18 **§ 22635. Use of permit fees**

19 22635. (a) Fees received by the department pursuant to Section 22630 shall be
20 deposited in the Fish and Game Preservation Fund, to be used by the department
21 to prepare, develop, and implement the nearshore fisheries management plan, and
22 for the following purposes:

23 (1) For research and management of nearshore fish stocks and nearshore habitat.
24 For the purposes of this section, “research” includes, but is not limited to,
25 investigation, experimentation, monitoring, and analysis, and “management”
26 means establishing and maintaining a sustainable utilization.

27 (2) For supplementary funding of allocations for the enforcement of statutes and
28 regulations applicable to nearshore fish stocks, including, but not limited to, the
29 acquisition of special equipment and the production and dissemination of printed
30 materials, such as pamphlets, booklets, and posters aimed at compliance with
31 nearshore fishing regulations.

32 (3) For the direction of volunteer groups assisting with nearshore fish stocks and
33 nearshore habitat management, for presentations of related matters at scientific
34 conferences and educational institutions, and for publication of related material.

35 (b) The department shall maintain internal accounts that ensure that the fees
36 received pursuant to Section 22630 are disbursed for the purposes stated in
37 subdivision (a).

38 (c) The commission shall require an annual accounting from the department on
39 the deposits into, and expenditures from, the Fish and Game Preservation Fund, as
40 related to the revenues generated pursuant to Section 22630. Notwithstanding
41 Section 7550.5 of the Government Code, a copy of the accounting shall be

1 provided to the Legislature for review by the Joint Committee on Fisheries and
2 Aquaculture, and if that committee is not in existence at the time, by the
3 appropriate policy committee in each house of the Legislature.

4 (d) Unencumbered fees collected pursuant to Section 22630 during any previous
5 calendar year shall remain in the fund and expended for the purposes of
6 subdivision (a). All interest and other earnings on the fees received pursuant to
7 Section 22630 shall be deposited in the fund and shall be used for the purposes of
8 subdivision (a).

9 **Comment.** Section 22635 continues former Fish and Game Code Section 8589.7 without
10 substantive change.

11 **§ 22640. Penalty for violation**

12 22640. (a) The commission shall temporarily suspend and may permanently
13 revoke the nearshore fishing permit of any person convicted of a violation of this
14 chapter.

15 (b) In addition to, or in lieu of, a license or permit suspension or revocation, the
16 commission may adopt and apply a schedule of fines for convictions of violations
17 of this chapter.

18 **Comment.** Section 22640 continues former Fish and Game Code Section 8589.5 without
19 substantive change.

20 CHAPTER 4. FAR OFFSHORE FISHERY

21 **§ 22700. “Far offshore fishery”**

22 22700. “Far offshore fishery” means a fishery that lies beyond the outer
23 boundary of the outer boundary of the United States 200-mile exclusive economic
24 zone, as that term is defined by paragraph (11) of Section 1802 of Title 16 of the
25 United States Code.

26 **Comment.** Section 22700 continues former Fish and Game Code Section 8111 without
27 substantive change.

28 **§ 22705. Legislative declaration**

29 22705. (a) The Legislature finds and declares that dramatic changes have taken
30 place in the methods and geographic areas of effort by California-based
31 commercial fishers.

32 (b) The Legislature further finds and declares that because the conditions that
33 now exist could not be seen at the time of their inception, some existing
34 regulations are now unreasonably restrictive. In some cases, existing statutes and
35 regulations prohibit California fishers from participating in, or landing in
36 California the primary product or incidental product of, their effort in newly
37 developed far offshore fisheries. This situation is detrimental to the interests of the
38 fishers, fish processors, and consumers of California.

39 **Comment.** Section 22705 continues former Fish and Game Code Section 8110 without
40 substantive change.

1 **§ 22710. Landing of fish taken in far offshore fishery**

2 22710. Notwithstanding any other section of this code, fish taken in a far
3 offshore fishery, which may be lawfully imported, may be landed in this state by
4 persons operating a commercial fishing vessel registered pursuant to Article 1
5 (commencing with Section 14750) of Chapter 2 of Title 2, who took the fish in the
6 far offshore fishery.

7 **Comment.** Section 22710 continues former Fish and Game Code Section 8112 without
8 substantive change.

9 **§ 22715. Declaration of intended landing**

10 22715. (a) Prior to departure from any port in the United States for the purpose
11 of taking fish in a far offshore fishery, the operator of any vessel landing fish in
12 California that will be taken in the far offshore fishery shall file a declaration of
13 that intention with the department, on forms prescribed by the department.

14 (b) The declaration shall be valid when signed by the vessel operator and
15 completed with information prescribed by the department.

16 (c) Upon completion of the trip and within 12 hours of arrival at a port in this
17 state, the operator of the vessel shall complete and submit the return portion of the
18 declaration to the department.

19 (d) This section does not apply to a commercial fisherman who uses or
20 possesses only troll lines, or gear for angling for the taking or possession of
21 albacore only.

22 **Comment.** Section 22715 continues former Fish and Game Code Section 8113 without
23 substantive change.

24 **§ 22720. Prohibited fishing during declared trip**

25 22720. It is unlawful for the operator of a vessel operating under authority of
26 this article to fish in, or land fish from, any waters within the United States 200-
27 mile exclusive economic zone, as that term is defined by paragraph (11) of Section
28 1802 of Title 16 of the United States Code, during any trip for which the operator
29 filed a declaration with the department to fish in a far offshore fishery.

30 **Comment.** Section 22720 continues former Fish and Game Code Section 8114 without
31 substantive change.

32 **CHAPTER 5. RESTRICTION OR CLOSURE OF FISHERIES**

33 **§ 22800. Restriction on take based on unsustainable fishing**

34 22800. (a) If the director determines, based on the best available scientific
35 information, or other relevant information that the director possesses or receives,
36 and on at least one public hearing in the area of a fishery, that taking of a species
37 in the fishery is being conducted in a manner that is not sustainable, the director
38 may order the closure of any waters or otherwise restrict the taking in waters of
39 the state of that species.

(b) The department shall give notice of any hearing to be held pursuant to this section to the commission and its marine resources committee as far in advance of the hearing date as possible.

(c) Any closure or restriction order shall be adopted by emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

(d) The director shall bring to the attention of the commission within seven working days any regulation adopted pursuant to this section.

(e) Any regulation adopted shall be effective for only 30 days, unless the commission extends the closure or restriction under any authority it may have, or unless the director orders another closure or restriction, consistent with the requirements of subdivision (a).

(f) Nothing in this section restricts any existing jurisdiction of the department with regard to the regulation of fisheries on the high seas.

Comment. Subdivisions (a) through (e) of Section 22800 restate former Fish and Game Code Section 7710(a)-(c) without substantive change.

Subdivision (f) continues the part of the last paragraph of former Fish and Game Code Section 7710 applicable to that section without change.

Notes. (1) Although existing Fish and Game Code Section 7710 authorizes the director, under specified circumstances, to order the closure of any waters or otherwise restrict the taking “under a fishing license” of certain species, it is unlikely the Legislature intended to limit that authorized restriction solely to *licensed* taking. Proposed Section 22800 (which would continue existing Section 7710) would authorize the director to restrict both licensed and unlicensed taking.

(2) Proposed Section 22800(a) is intended to restate the first sentence of existing Fish and Game Code Section 7710(a) to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“7710. (a) If the director determines, based on the best available scientific information, or other relevant information that the director possesses or receives, and on at least one public hearing in the area of the fishery, that taking in a fishery is being conducted in a manner that is not sustainable, the director may order the closure of any waters or otherwise restrict the taking under a fishing license in state waters of that species.”

The Commission invites comment on whether proposed Section 22800(a) accurately continues the intended meaning of the first sentence of existing Section 7710(a).

§ 22805. Removal of restriction

22805. (a) If, during the period that regulations adopted pursuant to Section 22800 are effective, the director determines, based on thorough and adequate scientific evidence and at least one public hearing in the area of the fishery, that any species or subspecies whose take was previously restricted has recovered, or additional evidence indicates that the species or subspecies is not in danger of irreparable injury, the director may remove the restriction on taking.

(b) Action to remove the restriction shall be by adoption of an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The director shall bring to the attention of the Legislature, within seven

1 calendar days, any regulation adopted pursuant to this section.

2 (d) Nothing in this section restricts any existing jurisdiction of the department
3 with regard to the regulation of fisheries on the high seas.

4 **Comment.** Subdivisions (a) through (c) of Section 22805 continue former Fish and Game
5 Code Section 7710.5 without substantive change.

6 Subdivision (d) continues the part of the last paragraph of former Fish and Game Code Section
7 7710 applicable to former Fish and Game Code Section 7710.5 without change.

8 **§ 22810. Appeal of closure or restriction**

9 22810. A closure or restriction under Section 22800, or the removal of a closure
10 or restriction under Section 22805, may be appealed to the commission. The
11 commission shall hear and decide the appeal within a time that is meaningful,
12 taking into account the duration of the fishery and the economics of the fishery.

13 **Comment.** Section 22810 continues former Fish and Game Code Section 7710.1 without
14 substantive change.

15 **§ 22815. Development of alternative fisheries or alternative fishing gear**

16 22815. Where a fishery is closed or restricted due to the need to protect a fishery
17 resource, marine mammals, or sea birds, or due to a conflict with other fisheries or
18 uses of the marine environment, it shall be the policy of the department and the
19 commission, consistent with budgetary and personnel considerations, to assist and
20 foster the development of alternative fisheries or alternative fishing gear for those
21 commercial fishers affected by the restriction, closure, or resource loss, including,
22 but not limited to, the issuing of experimental gear permits pursuant to Section
23 19900 for alternative fishing methods or fishing gear, consistent with the policies
24 set forth in the provisions of this code governing commercial fishing.

25 **Comment.** Section 22815 continues former Fish and Game Code Section 7712 without
26 substantive change.

27 **CHAPTER 6. COMMERCIAL FISHERIES CAPACITY REDUCTION**
28 **PROGRAM**

29 **§ 22900. Federal groundfish buy-back program**

30 22900. It is the intent of the Legislature to enact legislation establishing a
31 comprehensive program to allow California groundfish fishers to participate in any
32 federally established buy-back program for the Pacific groundfish fishery.

33 **Comment.** Section 22900 continues former Fish and Game Code Section 7630 without
34 substantive change.

35 **§ 22905. Establishment of program**

36 22905. There is hereby established the Commercial Fisheries Capacity
37 Reduction Account in the Fish and Game Preservation Fund. Fees collected
38 pursuant to Section 16610 shall be deposited into the account. Money in the
39 account shall be used to repay the California fishers' share of any federal loans

1 used in the federal West Coast Groundfish Fishery Capacity Reduction Program
2 (Sec. 212, P.L. 107-206).

3 **Comment.** Section 22905 continues the first and second sentences of former Fish and Game
4 Code Section 8125 without substantive change.

5 **§ 22910. Capacity reduction fee**

6 22910. The commission shall establish a capacity reduction fee on the taking of
7 certain species of fish and shellfish, consistent with the West Coast Groundfish
8 Fishery Capacity Reduction Program. In establishing the fee, the commission shall
9 also consider the administrative cost associated with collecting these fees.

10 **Comment.** Section 22910 continues former Fish and Game Code Section 8126 without
11 change.

12 **§ 22915. Regulation conforming state law with federal law**

13 22915. The commission may establish, by regulation, any additional program
14 elements necessary to conform state law to federal law, in order to allow
15 California groundfish fishers to fully participate in the federally established buy-
16 back program for the Pacific groundfish fishery.

17 **Comment.** Section 22915 continues the third sentence of former Fish and Game Code Section
18 8125 without substantive change.

19 **TITLE 16. MISCELLANEOUS PROGRAMS**

20 **CHAPTER 1. INSURANCE POOLING**

21 **§ 23100. Loss or damage to vessel or machinery**

22 23100. (a) Any person engaged in the business of licensed commercial fishing
23 may enter into an arrangement with other authorized persons for the pooling of
24 funds to pay claims or losses arising out of loss or damage to a vessel or
25 machinery used in the business of commercial fishing and owned by a member of
26 the pool. A pool established pursuant to this section is not, and shall not be,
27 subject to the Insurance Code and is not a member of the California Insurance
28 Guarantee Association under Article 14.2 (commencing with Section 1063) of
29 Chapter 1 of Part 2 of Division 1 of the Insurance Code.

30 (b) The pool established pursuant to this section shall have initial pooled
31 resources of not less than two hundred fifty thousand dollars (\$250,000), and shall
32 operate under generally acceptable accounting principles.

33 (c) All participating persons in any pool established pursuant to this section shall
34 agree to pay premiums or make other mandatory financial contributions or
35 commitments necessary to ensure a financially sound risk pool.

36 (d) For the purpose of this section, “person engaged in the business of licensed
37 commercial fishing” and “authorized person” mean any natural person,
38 partnership, corporation, limited liability company, or other person or entity

1 engaged in the business of fishing for commercial purposes for which that person
2 or its agents or employees are required to be licensed.

3 **Comment.** Section 23100 continues former Fish and Game Code Section 7690 without
4 substantive change.

5 CHAPTER 2. EDUCATIONAL AND SCIENTIFIC PROGRAMS

6 § 23150. Take for educational or scientific purposes

7 23150. The commission may establish rules and regulations for the commercial
8 taking of fish for educational and scientific purposes.

9 **Comment.** Section 23150 continues former Fish and Game Code Section 7709 without
10 change.

11 CHAPTER 3. MARKETING

12 § 23200. Collection of an assessment on behalf of marketing council or commission

13 23200. The director may enter into an agreement with the Secretary of Food and
14 Agriculture for the collection of an assessment on behalf of any marketing council
15 or commission for fish or seafood organized under the Food and Agricultural
16 Code. The agreement may authorize the department to collect the assessment in
17 conjunction with the collection of landing taxes on those species for which the
18 marketing council or commission is organized. The department shall remit the
19 amount of the assessment collected to the Secretary of Food and Agriculture
20 according to the agreement after making the collection. Prior to remitting the
21 assessments, the department may deduct an administrative fee in an amount agreed
22 to with the Secretary of Food and Agriculture to pay the costs of collection and
23 remission of the assessments. The administrative fees shall be deposited in the
24 Fish and Game Preservation Fund.

25 **Comment.** Section 23200 continues former Fish and Game Code Section 1069 without
26 change.

DIVISION 7. WILDLIFE PROPAGATION, DOMESTICATION,
POSSESSION, AND SALE

PART 1. AQUACULTURE

TITLE 1. GENERAL PROVISIONS

§ 23300. Applicability of part

23300. Nothing in this part applies to authorized species of ornamental marine or freshwater plants or animals that are not utilized for human consumption or bait purposes and that are maintained in closed systems for personal, pet industry, or hobby purposes.

Comment. Section 23300 continues former Fish and Game Code Section 15006 without substantive change.

§ 23305. Governing provisions

23305. The business of aquaculture is governed by this part, and is exempt from Part 6 (commencing with Section 14200) of Division 6 and any other provision of this code relating to commercial fishing, harvesting, processing, and marketing.

Comment. Section 23305 continues former Fish and Game Code Section 15000(a) without substantive change.

TITLE 2. ADMINISTRATION

CHAPTER 1. AGENCY DUTIES AND POWERS

§ 23350. Coordination of agencies

23350. (a) Except as provided in Sections 23355, 23800, 23810, and 23815, the business of aquaculture processing, distribution, and marketing is administered by the Secretary of Food and Agriculture.

(b) The director may enter into an agreement with the Secretary of Food and Agriculture for the resolution of any conflict that arises under subdivision (a).

(c) Any costs incurred by the department in implementing Sections 23355, 23800, 23810, and 23815 shall be recovered pursuant to this part.

Comment. Section 23350 continues former Fish and Game Code Section 15000(b)-(d) without substantive change.

§ 23355. Commission regulation

23355. (a) When necessary for the protection of native wildlife, the commission may regulate the transportation, purchase, possession, and sale of specific aquaculture products as provided for in this section.

1 (b) The commission may determine that aquaculture products shall be
2 accompanied by a document containing any of the following information:

3 (1) The name, address, and registration number of the aquaculture producer.

4 (2) The species.

5 (3) The weight, volume, or count within the container.

6 (4) The date of the shipment.

7 (5) The name and address of the intended receiver.

8 (c) The commission may require that certain aquaculture products shall be
9 additionally identified as being aquaculture produced, except for the following:

10 (1) Trout.

11 (2) Catfish.

12 (3) Kelp and aquatic plants.

13 (4) Frogs and amphibia.

14 (5) All bivalve mollusks (except little neck clams).

15 (6) All members of the family Centrarchidae.

16 (7) Crayfish.

17 (8) Sea urchins.

18 (9) Shrimp and fresh water prawns.

19 (10) Crab.

20 **Comment.** Section 23355 continues former Fish and Game Code Section 15005 without
21 change.

22 **§ 23360. Preparation of environmental impact reports by department**

23 23360. (a) The department shall, in consultation with the Aquaculture
24 Development Committee, prepare programmatic environmental impact reports for
25 existing and potential commercial aquaculture operations in both coastal and
26 inland areas of the state if both of the following conditions are met:

27 (1) Funds are appropriated to the department for this purpose.

28 (2) Matching funds are provided by the aquaculture industry. For the purpose of
29 this section, “matching funds” include, but are not limited to, any funds expended
30 by the aquaculture industry before January 1, 2006, for the preparation of a
31 programmatic environmental impact report.

32 (b) If the final programmatic environmental impact report is prepared pursuant
33 to subdivision (a) for coastal marine finfish aquaculture projects and approved by
34 the commission under the California Environmental Quality Act set forth in
35 Division 13 (commencing with Section 21000) of the Public Resources Code, the
36 report shall provide a framework for managing marine finfish aquaculture in an
37 environmentally sustainable manner that, at a minimum, adequately considers all
38 of the following factors:

39 (1) Appropriate areas for siting marine finfish aquaculture operations to avoid
40 adverse impacts, and minimize any unavoidable impacts, on user groups, public
41 trust values, and the marine environment.

42 (2) The effects on sensitive ocean and coastal habitats.

(3) The effects on marine ecosystems, commercial and recreational fishing, and other important ocean uses.

(4) The effects on other plant and animal species, especially species protected or recovering under state and federal law.

(5) The effects of the use of chemical and biological products and pollutants and nutrient wastes on human health and the marine environment.

(6) The effects of interactions with marine mammals and birds.

(7) The cumulative effects of a number of similar finfish aquaculture projects on the ability of the marine environment to support ecologically significant flora and fauna.

(8) The effects of feed, fish meal, and fish oil on marine ecosystems.

(9) The effects of escaped fish on wild fish stocks and the marine environment.

(10) The design of facilities and farming practices so as to avoid adverse environmental impacts, and to minimize any unavoidable impacts.

Comment. Section 23360 continues former Fish and Game Code Section 15008 without change.

§ 23365. Department aquaculture coordinator

23365. There is within the department an aquaculture coordinator who shall perform all of the following duties as part of the department's aquaculture program:

(a) Promote understanding of aquaculture among public agencies and the general public.

(b) Propose methods of reducing the negative impact of public regulation at all levels of government on the aquaculture industry.

(c) Provide information on all aspects of regulatory compliance to the various sectors of the aquaculture industry.

(d) Provide advice to the owner of a registered aquaculture facility on project siting and facility design, as necessary, to comply with regulatory requirements.

(e) Coordinate with the Aquaculture Development Committee regarding the duties described in subdivisions (a) to (d), inclusive.

Comment. Section 23365 continues former Fish and Game Code Section 15100 without change.

CHAPTER 2. FEES AND COSTS

§ 23500. Costs for requested inspections

23500. Aquaculturists operating under this part shall pay all costs incurred by the department when conducting any inspections of plants, animals, facilities, or culture areas required by this part, or by regulations adopted pursuant to this part, when requested by the aquaculturists.

Comment. Section 23500 continues former Fish and Game Code Section 15004(c) without substantive change.

1 **§ 23505. Evaluation of fees by department**

2 23505. (a) At least once every five years, the department shall analyze the fees
3 and taxes authorized by this part to ensure that the amount of the appropriate fee
4 or tax is sufficient to fully fund the aquaculture program.

5 (b) The department shall, as appropriate, recommend fee or tax changes to the
6 Legislature or the commission.

7 **Comment.** Section 23505 continues former Fish and Game Code Section 15004(a) and (b)
8 without substantive change.

9 **TITLE 3. REGISTRATION**

10 **CHAPTER 1. GENERAL PROVISIONS**

11 **§ 23600. Registration requirement**

12 23600. It is unlawful to conduct aquaculture operations or to culture approved
13 species of aquatic plants and animals unless registered under this chapter.

14 **Comment.** Section 23600 continues the third sentence of former Fish and Game Code Section
15 15101(b) without substantive change.

16 **Note.** The Fish and Game Code presently contains two versions of Fish and Game Code
17 Section 15101, the first operative until January 1, 2018, the second operative on January 1, 2018.
18 See 2012 Cal. Stat. ch. 301, § 2, 3. However, the provision that would be continued by proposed
19 Section 15650 appears and reads the same in both versions.

20 **§ 23605. Required information**

21 23605. (a) The owner of each aquaculture facility shall register all of the
22 following information with the department by March 1 of each year:

23 (1) The owner's name.

24 (2) The species grown.

25 (3) The location or locations of each operation or operations.

26 (b) The department may provide registration forms for this purpose.

27 (c) The annual registration of information required by subdivision (a) is not a
28 project for purposes of the California Environmental Quality Act (Division 13
29 (commencing with Section 21000) of the Public Resources Code).

30 **Comment.** Subdivision (a) of Section 23605 continues former Fish and Game Code Section
31 15101(a) without substantive change.

32 Subdivision (b) continues the first part of the first sentence of former Fish and Game Code
33 Section 15101(b) without substantive change.

34 Subdivision (c) continues former Fish and Game Code Section 15101(c) without substantive
35 change.

36 **Note.** The Fish and Game Code presently contains two versions of Fish and Game Code
37 Section 15101, the first operative until January 1, 2018, the second operative on January 1, 2018.
38 See 2012 Cal. Stat. ch. 301, § 2, 3. However, the provisions that would be continued by proposed
39 Section 15655 appears and reads the same in both versions.

§ 23610. Department review of registration

23610. The department may establish a procedure for the review of the information provided pursuant to Section 23605, to ensure that the operation will not be detrimental to native wildlife.

Comment. Section 23610 continues the second part of the first sentence of former Fish and Game Code Section 15101(b) without substantive change.

Note. The Fish and Game Code presently contains two versions of Fish and Game Code Section 15101, the first operative until January 1, 2018, the second operative on January 1, 2018. See 2012 Cal. Stat. ch. 301, § 2, 3. However, the provision that would be continued by proposed Section 15660 appears and reads the same in both versions.

CHAPTER 2. FEES

§ 23700. Registration fee

23700. (a) The department shall impose a registration fee of five hundred forty-nine dollars (\$549) to recover the cost of reviewing new registrations.

(b) For renewing registrations, the department shall impose a registration fee of two hundred seventy-five dollars (\$275).

(c) The registration fees specified in this section are applicable to the 2004 registration year, and shall be adjusted annually thereafter pursuant to Section 3755.

Comment. Section 23700 continues a part of the first sentence, the second sentence, and the fourth sentence of former Fish and Game Code Section 15101(b), without substantive change.

Note. The Fish and Game Code presently contains two versions of Fish and Game Code Section 15101, one operative until January 1, 2018, the second operative on January 1, 2018. See 2012 Cal. Stat. ch. 301, §§ 2, 3.

As it is anticipated that the proposed law will take effect on or after January 1, 2018, proposed Section 23700 would continue the text of the specified sentences of the version of Section 15101(b) operative on January 1, 2018.

§ 23705. Surcharge fee based on gross annual sales

23705. (a) In addition to the fees specified in Section 23700, a surcharge fee of four hundred twelve dollars (\$412) shall be paid at the time of registration by the owner of an aquaculture facility, if the gross annual sales of aquaculture products of the facility during the prior calendar year exceed twenty-five thousand dollars (\$25,000).

(b) The surcharge fee imposed pursuant to this section shall be applicable to the 2004 registration year, and shall be adjusted annually thereafter pursuant to Section 3755.

(c) Any person who fails to pay the surcharge fee required in this section at the time of registration shall be assessed a delinquency penalty pursuant to Section 23710.

Comment. Section 23705 continues former Fish and Game Code Section 15103(a), (c), and (d) without substantive change.

Notes. The Fish and Game Code presently contains two versions of Fish and Game Code Section 15103, one operative until January 1, 2018, the second operative on January 1, 2018. See 2012 Cal. Stat. ch. 301, §§ 4, 5.

As it is anticipated that the proposed law will take effect on or after January 1, 2018, proposed Section 23705 would continue the text of the specified subdivisions of the version of Section 15103 operative on January 1, 2018.

(2) Existing Section 15103(a) provides that the surcharge fee specified by the section shall be paid “at the time of registration.” However, as the imposition of the fee is triggered by a specified amount of annual sales during the prior calendar year, it would appear a surcharge fee could never be required at the time of an initial registration of an aquaculture facility, but only upon a renewal of a registration. Proposed Section 23705(a) therefore specifies that a surcharge fee shall be paid at the time of renewal of registration.

The Commission invites comment on whether this revision is problematic.

§ 23710. Penalty for delinquent fee payment

23710. (a) The registration fee required by subdivision (a) of Section 23700 is delinquent if not paid within one calendar month of the commencement of business. The fee for renewal of registration required by subdivision (b) of Section 23700, and the surcharge fee required by Section 23705, are delinquent if not paid on or before April 1 of the registration year.

(b) A penalty of fifty dollars (\$50) shall be imposed for any delinquent fee, which shall be paid at the time of registration or renewal.

(c) The penalty imposed shall be applicable to the 2005 registration year, and shall be adjusted annually thereafter pursuant to Section 3755.

Comment. Section 23710 continues former Fish and Game Code Section 15104(a)-(c) without substantive change.

Notes. The Fish and Game Code presently contains two versions of Fish and Game Code Section 15104, one operative until January 1, 2018, the second operative on January 1, 2018. See 2012 Cal. Stat. ch. 301, §§ 6, 7.

As it is anticipated that the proposed law will take effect on or after January 1, 2018, proposed Section 23705 would continue the text of the version of Section 15104 operative on January 1, 2018.

(2) Existing Section 15104(a), which specifies when an aquaculture fee is delinquent and triggers imposition of a penalty, is confusingly drafted. The subdivision reads as follows:

“If any person engages in the business of aquaculture, as regulated under this division, without having paid the registration fee or surcharge fee within one calendar month of the commencement of business, or, for renewal of registration, on or before April 1 of the registration year, the fees are delinquent.”

The Commission’s concern is the indication of when the specified “surcharge fee” is due. This fee, which is provided for in existing Section 15103, is determined based on an aquaculture operation’s gross annual sales during the prior year. It would therefore appear to be impossible for any owner to be able to know to pay this fee within one calendar month of the commencement of business. The Commission suspects the intended due date for the surcharge fee was intended to be the same as the due date for the registration renewal fee, rather than the due date for an initial registration fee, and proposed Section 23710 would make that revision.

The Commission invites comment on whether proposed Section 23710 correctly states the intended meaning of existing Section 15104.

1 **§ 23715. Expenditure of collected funds**

2 23715. (a) Notwithstanding Section 3600, 3605, or 3810, all moneys collected
3 by the department pursuant to this part shall be deposited in the Fish and Game
4 Preservation Fund, and shall be expended solely on the department's aquaculture
5 program pursuant to this part.

6 (b) Notwithstanding Section 3800, these moneys are available for appropriation
7 by the Legislature in the annual Budget Act for purposes of this part.

8 (c) The department shall maintain internal accountability necessary to ensure
9 that all restrictions on the expenditure of these funds are met, and shall provide an
10 accounting of the aquaculture program account balance and expenditures upon
11 request of the Aquaculture Development Committee, or the Joint Committee on
12 Fisheries and Aquaculture.

13 (d) Revenues pursuant to this chapter may be used only to pay the costs incurred
14 in the administration and enforcement of the department's aquaculture program.

15 (e) The department shall prepare and submit to the Legislature, on or before
16 February 1, 2017, a report regarding the aquaculture program undertaken using
17 revenues derived pursuant to that program, the benefits derived, and its
18 recommendations for revising the aquaculture program requirement, if any. The
19 report shall be submitted in compliance with Section 9795 of the Government
20 Code.

21 (f) The requirement for submitting a report under subdivision (e) is inoperative
22 on February 1, 2021, pursuant to Section 10231.5 of the Government Code.

23 **Comment.** Section 23715 continues former Fish and Game Code Section 15105 without
24 substantive change. See also Gov't Code Section 10231.5 (bill imposing requirement to report to
25 Legislature generally must include provision repealing or making inoperative the reporting
26 requirement four years after date the report is required).

27 **§ 23720. Sales and production records**

28 23720. Each owner of a registered aquaculture facility shall maintain sales and
29 production records which shall be made available upon request of the department
30 to assist the department in the administration of Section 23365, and this title.

31 **Comment.** Section 23705 continues former Fish and Game Code Section 15103(b) without
32 substantive change.

33 **TITLE 4. AQUATIC ORGANISMS**

34 **§ 23800. Regulation of placement of organisms**

35 23800. (a) The commission may regulate the placing of aquatic plants and
36 animals in waters of the state.

37 (b) The commission may prohibit the placement of specific species of aquatic
38 plants or animals in designated waters of the state. The prohibition may not
39 include species that are found to be native, or that are stocked by the state in a
40 location where prohibition is contemplated.

1 **Comment.** Subdivision (a) of Section 23800 continues the first sentence of former Fish and
2 Game Code Section 15200 without substantive change.

3 Subdivision (b) continues former Fish and Game Code Section 15202 without substantive
4 change.

5 **§ 23805. Operation detrimental to adjacent wildlife**

6 23805. The department may prohibit an aquaculture operation or the culturing of
7 any species at any location where it is determined it would be detrimental to
8 adjacent native wildlife.

9 **Comment.** Section 23805 continues former Fish and Game Code Section 15102 without
10 change.

11 **§ 23810. Permit required to place organisms**

12 23810. (a) A permit is required to place fish on public or private land or water in
13 any watershed above an established public or private fish hatchery.

14 (b) The department shall deny the permit if there is evidence that water quality
15 or potential disease transfer will be adverse to the established hatchery.

16 **Comment.** Section 23810 continues former Fish and Game Code Section 15201 without
17 substantive change.

18 **§ 23815. Movement of fish between registered aquaculturists**

19 23815. Movement of live fish between two registered aquaculturists who are
20 registered for those species does not require a permit.

21 **Comment.** Section 23815 continues the second sentence of former Fish and Game Code
22 Section 15200 without change.

23 **§ 23820. Fee for use of public land and waters**

24 23820. (a) The department may assess a privilege fee on persons growing
25 aquaculture products on public lands and in public waters based on the price per
26 pound of the products sold. The privilege fees, if imposed, shall be set at amounts
27 necessary to defray the costs of the commission and the department in
28 administering this part. However, the privilege fees if any, may not exceed the tax
29 rates as provided in Section 20955.

30 (b) The price per pound of the products sold shall be based on the whole product
31 weight, or its equivalent as taken by the lessee.

32 (c) The privilege fee imposed by this section shall be paid monthly to the
33 department within 30 days after the close of each month. If not paid within 60
34 days after the close of the month in which it is due, a 10 percent penalty shall be
35 paid.

36 **Comment.** Section 23820 continues former Fish and Game Code Section 15003 without
37 substantive change.

38 **Note.** The reference to a “privilege tax” in existing Section 15003 (which would be continued
39 by proposed Section 23820(c)) has been revised to refer to a “privilege fee.”

40 **The Commission invites comment on whether that revision is appropriate.**

TITLE 5. ACQUISITION OF ORGANISMS

§ 23900. Sources for brood stock

23900. Aquatic plants or animals may be legally obtained for use as brood stock from any of the following sources:

- (a) A holder of a commercial fishing license.
- (b) A registered aquaculturist.
- (c) The department.
- (d) Imported sources authorized by Title 8 (commencing with Section 24700).

Comment. Section 23900 continues former Fish and Game Code Section 15300 without substantive change.

Note. As indicated in other Notes, the proposed law would generally replace statutory references to persons licensed to engage in specified commercial fishing activity with references to persons required to obtain the specified license. The expressed rationale for this substitution is the belief that the Legislature likely did not intend persons engaging in commercial fishing activity to escape regulation by letting their license lapse, or never obtaining one at all.

However, on rare occasion a reference to a “licensed” commercial actor may have been affirmatively intended, in order that the referenced license be understood as a required element of a provision. Existing Fish and Game Code Section 15300 (which would be continued by proposed Section 23900) may be such an instance. The provision indicates that one of four sources from which an aquaculturist may legally obtain brood stock is “a holder of a commercial fishing license.”

Although the Commission cannot be certain, the use of this language (as contrasted with the customary and far more frequently used reference to a “commercial fisherman”) suggests the possibility that the Legislature wished to restrict the persons providing brood stock to aquaculturists to persons whose credentials to engage in commercial fishing activity have been in some way verified by the Department. (A second specified source for the brood stock is a “registered” aquaculturist.)

The Commission invites comment on whether it was the Legislature’s intent to allow aquaculturists to obtain brood stock from any commercial fisherman, or only those who have a valid commercial fishing license.

§ 23905. Collection of organisms by registered aquaculturist

23905. Aquatic plants and animals may be collected by a registered aquaculturist only with the written approval of the department. The department may specify the time, place, and manner of collection, and may collect a fee from the aquaculturist in an amount sufficient to cover the cost of processing the approval.

(b) Notwithstanding subdivision (a), the fee for collecting sturgeon or striped bass broodstock shall be five hundred dollars (\$500).

Comment. Subdivision (a) of Section 23905 continues former Fish and Game Code Section 15301(b) without change.

Subdivision (b) continues former Fish and Game Code Section 15301(c) without change.

§ 23910. Sale of organisms by department

23910. (a) The department may sell wild aquatic plants or animals, except rare, endangered, or fully protected species, for aquaculture use, at a price

1 approximating the administrative cost to the department for the collection or sale
2 of the plants or animals. The commission shall set this price.

3 **Comment.** Section 23910 continues former Fish and Game Code Section 15301(a) without
4 change.

5 **§ 23915. Ownership of progeny**

6 23915. The cultured progeny of wild plants and animals lawfully obtained under
7 Section 23900 are the exclusive property of that person who cultured them, or that
8 person's successor in interest.

9 **Comment.** Section 23915 continues former Fish and Game Code Section 15001 without
10 substantive change.

11 **TITLE 6. LEASING OF STATE WATER BOTTOMS**

12 **CHAPTER 1. GENERAL PROVISIONS**

13 **§ 24000. Authority and procedure**

14 24000. (a) Except as prohibited by Chapter 2 (commencing with Section 24950)
15 of Title 10, the commission may lease state water bottoms, or the water column, to
16 any person for aquaculture, including, but not limited to, marine finfish
17 aquaculture.

18 (b) Upon appropriation of funds for that purpose, or if funds are otherwise
19 available, the commission shall adopt regulations governing the terms of the
20 leases, after consulting with affected stakeholders in a public process.

21 (c) No state leases shall be issued, unless the commission determines that the
22 lease is in the public interest in a public hearing conducted in a fair and transparent
23 manner, with notice and comment, in accordance with commission procedures.

24 (d) Leases issued, and regulations adopted, pursuant to this section, shall not be
25 construed to be fishery management plans.

26 **Comment.** Section 24000 continues former Fish and Game Code Section 15400(a) without
27 substantive change.

28 **§ 24005. Lease required for marine finfish aquaculture**

29 24005. A person shall not engage in marine finfish aquaculture in ocean waters
30 within the jurisdiction of the state without a lease from the commission pursuant to
31 Chapter 2 (commencing with Section 24950) of Title 10.

32 **Comment.** Section 24005 continues the first sentence of former Fish and Game Code Section
33 15400(b) without substantive change.

34 **§ 24010. Standards for leases and regulation**

35 24010. Leases and regulations adopted by the commission for marine finfish
36 aquaculture shall meet, but are not limited to, all of the following standards:

1 (a) The lease site is considered appropriate for marine finfish aquaculture in the
2 programmatic environmental impact report if prepared and approved by the
3 commission pursuant to Section 23360.

4 (b) A lease shall not unreasonably interfere with fishing or other uses or public
5 trust values, unreasonably disrupt wildlife and marine habitats, or unreasonably
6 harm the ability of the marine environment to support ecologically significant
7 flora and fauna.

8 (c) A lease shall not have significant adverse cumulative impacts.

9 (d) To reduce adverse effects on global ocean ecosystems, the use of fish meal
10 and fish oil shall be minimized. Where feasible, alternatives to fish meal and fish
11 oil, or fish meal and fish oil made from seafood harvesting byproducts, shall be
12 utilized, taking into account factors that include, but need not be limited to, the
13 nutritional needs of the fish being raised and the availability of alternative
14 ingredients.

15 (e) Lessees shall establish best management practices, approved by the
16 commission, for each lease site. Approved best management practices shall
17 include a regular monitoring, reporting, and site inspection program that requires
18 at least annual monitoring of lease sites to ensure that the operations are in
19 compliance with best management practices related to fish disease, escapement,
20 and environmental stewardship, and that operations are meeting the requirements
21 of this section.

22 (f) The commission may remove fish stocks, close facilities, or terminate the
23 lease if it finds that the lessee is not in compliance with best management
24 practices, that the lessee's activities have damaged or are damaging the marine
25 environment, or that the lessee is not in compliance with this section. The
26 commission shall take immediate remedial action to avoid or eliminate significant
27 damage, or the threat of significant damage, to the marine environment.

28 (g) Before issuance of the lease, the lessee shall provide baseline benthic habitat
29 and community assessments of the proposed lease site to the applicable regional
30 water quality control board or the State Water Resources Control Board, and shall
31 monitor the benthic habitat and community during the operation of the lease in a
32 manner determined by the regional board or the State Water Resources Control
33 Board.

34 (h) The regional board and the State Water Resources Control Board may
35 establish and impose reasonable permit fees to pay for the costs of administering
36 and conducting the assessment and monitoring program.

37 (i) Finfish numbers and density shall be limited to what can be safely raised
38 while protecting the marine environment, as specified by the terms of the lease,
39 subject to review and amendment by the commission.

40 (j) The use of all drugs, chemicals, and antibiotics, and amounts used and
41 applied, shall be minimized. All drugs, therapeutic substances, and antibiotics
42 shall be used and applied only as approved by the United States Food and Drug
43 Administration for marine finfish aquaculture. The lessee shall report that use and

1 application to the commission on a regular schedule, as determined by the
2 commission, but no less than annually, that shall be included in the terms of the
3 lease. The commission shall review those reports on a regular basis and at least
4 annually.

5 (k) The commission shall require all farmed fish to be marked, tagged, or
6 otherwise identified as belonging to the lessee in a manner determined appropriate
7 by the commission, unless the commission determines that identifying farmed fish
8 is unnecessary for protecting wild fish stocks, the marine environment, or other
9 ocean uses.

10 (l) All facilities and operations shall be designed to prevent the escape of farmed
11 fish into the marine environment and to withstand severe weather conditions and
12 marine accidents. The lessee shall maintain records on all escapes in a manner
13 determined by the commission. In the event of more than de minimis escapement,
14 the number of escaped fish and the circumstances surrounding the incident shall be
15 reported immediately to the commission, and the lessee shall be responsible for
16 damages to the marine environment caused by those escaped fish, as determined
17 by the commission.

18 (m) The lessee shall, at a minimum, meet all applicable requirements imposed
19 by the State Water Resources Control Board and the regional water quality control
20 boards, and shall prevent discharges to the maximum extent possible. Monitoring
21 and testing of water quality shall be required on a regular basis as deemed
22 appropriate by the State Water Resources Control Board or the regional water
23 quality control boards. All inspection and monitoring reports and other records,
24 and all data on the discharge of chemical and biological pollutants shall be kept on
25 file and available for public review.

26 **Comment.** Section 24010 continues the second sentence of former Fish and Game Code
27 Section 15400(b) without substantive change.

28 **§ 24015. Exemption from standards for specified restoration or enhancement plans**

29 24015. If a restoration or enhancement plan is submitted to, and approved by,
30 the commission, and that plan, among other things, provides for monitoring and
31 protecting the benthic habitat, the prevention of pollution, and the prevention of
32 adverse impacts on wild fish stocks from disease, parasites, and genetic
33 alterations, Section 24010 shall not apply to any of the following:

34 (a) Artificial propagation, rearing, and stocking projects for the purpose of
35 recovery, restoration, or enhancement of native fish stocks carried out under either
36 of the following:

37 (1) A scientific collecting or research permit issued by the department.

38 (2) The California Ocean Resources Enhancement and Hatchery Program, as set
39 forth in Title 4 (commencing with Section 25700) of Part 3, and Sections 12910,
40 14620, 21935, and subdivision (c) of Section 38875, for the enhancement of white
41 sea bass.

(b) Nonprofit hatcheries and nonprofit artificial propagation projects operated by, or on behalf of, licensed commercial or sport fishers for the purpose of recovery, restoration, or enhancement of California's native marine fish populations, pursuant to Chapter 2 (commencing with Section 11800) of Title 2 of Part 4 of Division 6, and Section 25125.

Comment. Section 24015 continues former Fish and Game Code Section 15400(c) without substantive change.

§ 24020. Disclaimer of application to other marine finfish aquaculture law or regulation

24020. Nothing in this chapter shall be construed to limit or expand the application of any other state law or regulation pertaining to marine finfish aquaculture conducted within the ocean waters under the jurisdiction of this state.

Comment. Section 24020 continues former Fish and Game Code Section 15400(d) without substantive change.

CHAPTER 2. LEASE PROCEDURE

§ 24100. Application for lease

24100. (a) A person wishing to lease a state water bottom shall make a written application to the commission.

(b) The application shall contain all of the following information:

(1) A map showing the area to be leased, its general vicinity, and all ownership and boundary lines in the vicinity.

(2) A description of the organisms to be grown and the culture techniques to be used.

(3) An estimate of the acreage to be leased.

(4) A nonrefundable filing fee of five hundred dollars (\$500).

(c) Areas used by the public for digging clams shall not be leased. The department shall designate those areas.

Comment. Subdivision (a) of Section 24100 continues the first sentence of former Fish and Game Code Section 15403 without substantive change.

Subdivision (b) continues the second sentence and subdivisions (a)-(d) of former Fish and Game Code Section 15403 without substantive change.

Subdivision (c) continues former Fish and Game Code Section 15401 without change.

§ 24105. Public notice of application

24105. (a) If the commission finds that a state water bottom applied for is available for lease, and that the lease would be in the public interest, the commission shall publish a notice that the area is being considered for leasing.

(b) The commission shall also publish legal notices in a newspaper of general circulation in each county where the water bottom or any part of the water bottom is located, describing the area to be leased and the type of operation to be conducted.

(c) The publication shall comply with Sections 6060 and 6066 of the Government Code.

Comment. Section 24105 continues former Fish and Game Code Section 15404 without substantive change.

§ 24110. Notification to State Lands Commission

24110. (a) The department shall notify the State Lands Commission of all applications for water bottom leases.

(b) The department shall inform the State Lands Commission of all leases executed, renewed, or assigned pursuant to this title, and shall furnish the State Lands Commission with information concerning those leases that the State Lands Commission may require.

Comment. Section 24110 continues former Fish and Game Code Section 15415 without substantive change.

§ 24115. Lease to new bidders

24115. (a) Except as specified in subdivision (b), the commission shall award state water bottom leases to the highest responsible bidder, if the bid meets or exceeds the minimum annual rent established by the commission, which shall not be less than two dollars (\$2) per acre, for all species cultivated, unless the acreage applied for is 10 acres or less, in which case the minimum acceptable rent shall be ten dollars (\$10) per acre.

(b) The commission may reject any or all bids for the lease of state water bottoms if it deems the rejection to be in the public interest.

(c) Fees for marine finfish aquaculture leases shall, at a minimum, be sufficient to pay for the costs of administering the marine finfish leasing program, and for monitoring and enforcing the terms of the leases.

Comment. Subdivision (a) of Section 24115 continues the first sentence of former Fish and Game Code Section 15406.5(a) without substantive change.

Subdivision (b) continues the third sentence of former Fish and Game Code Section 15406.5(a) without change.

Subdivision (c) continues former Fish and Game Code Section 15406.5(b) without substantive change.

CHAPTER 3. TERMS OF LEASE

§ 24200. Term of lease

24200. (a) Except as specified in subdivision (b), no initial term of a state water bottom lease shall exceed 25 years.

(b) The initial term of a state water bottom lease for marine finfish aquaculture shall not exceed 10 years.

Comment. Section 24200 continues former Fish and Game Code Section 15405 without change.

1 **§ 24205. Rent increases by Legislature**

2 24205. All state water bottom leases shall be subject to the power of the
3 Legislature to increase or decrease the rents, fees, taxes, and other charges relating
4 to the lease, but no increase in rent shall be applicable to an existing lease until it
5 is renewed.

6 **Comment.** Section 24205 continues former Fish and Game Code Section 15410 without
7 substantive change.

8 **§ 24210. Renewal of lease**

9 24210. (a) Each state water bottom lease shall specify a period prior to
10 expiration when renewal of the lease may be requested by the lessee. If during that
11 period the lessee is still actively engaged in aquaculture, as determined by the
12 commission, the lessee shall have a prior right to renew the lease on terms agreed
13 upon between the commission and the lessee. If terms are not agreed upon, the
14 commission shall advertise for bids on the lease. If a request for renewal is not
15 made by the lessee, the commission shall advertise for bids on the lease. The
16 commission shall consider bids only from aquaculturists registered pursuant to
17 Chapter 1 (commencing with Section 23600) of Title 3.

18 (b) Notwithstanding subdivision (a), with respect to any lease of state water
19 bottoms in effect on January 1, 1983, the lessee shall have a prior right to renew
20 the lease. If the lessee does not renew the lease, the commission shall advertise for
21 bids on the lease. The commission shall consider bids only from aquaculturists
22 registered pursuant to Chapter 1 (commencing with Section 23600) of Title 3.

23 (c) Except as specified in subdivision (d), a lease may be renewed for additional
24 periods not to exceed 25 years each.

25 (d) A lease for marine finfish aquaculture may be renewed for additional periods
26 not to exceed five years each.

27 **Comment.** Section 24210 continues former Fish and Game Code Section 15406 without
28 substantive change.

29 **§ 24215. Periodic reports to commission**

30 24215. A water bottom lease may require periodic reports that the commission
31 deems necessary for the proper administration of the state's water bottoms.

32 **Comment.** Section 24215 continues former Fish and Game Code Section 15414 without
33 change.

34 **§ 24220. Oyster leases**

35 24220. (a) The annual rent for any lease in effect on January 1, 1983, for the
36 cultivation of oysters, shall be one dollar (\$1) per acre, until the expiration of the
37 lease.

38 (b) In addition to the rent specified in subdivision (a), every person operating
39 under an oyster lease shall pay a privilege fee of four cents (\$0.04) per packed
40 gallon, or fraction of a gallon, of shucked oysters harvested by the lessee.

(c) If the oysters are marketed in the shell, the privilege fee shall be based on the equivalent yield of shucked oyster meat. In determining the yield of oysters, it shall be deemed that 100 oysters are equivalent to one packed gallon of shucked oyster meat.

(d) The privilege fee imposed by this section is the exclusive privilege fee that shall be imposed on lessees of state water bottoms for oyster cultivation, notwithstanding subdivision (a) of Section 23820.

Comment. Subdivision (a) of Section 24220 continues the second sentence of former Fish and Game Code Section 15406.5(a) without substantive change.

Subdivisions (b) through (d) continue former Fish and Game Code Section 15406.7 without substantive change.

Note. The reference to a “privilege tax” in existing Section 15406.7 (which would be continued by proposed Section 24220(b)-(d)) has been revised to refer to a “privilege fee.”

The Commission invites comment on whether that revision is appropriate.

CHAPTER 4. RIGHTS AND RESPONSIBILITIES OF LESSEE

§ 24300. Payment of rent

24300. (a) The annual rent for a state water bottom lease shall be paid to the department within 30 days of the commencement of the lease and within 30 days of each anniversary of the commencement of the lease.

(b) The commission may establish penalty fees for late payment of rent due under a state water bottom lease.

(c) The commission may cancel a state water bottom lease if rent is not paid within 90 days of the commencement of the lease and within 90 days of each anniversary of the commencement of the lease.

Comment. Section 24300 continues former Fish and Game Code Section 15407 without substantive change.

§ 24305. Lessee responsibility for infringement

24305. A lessee of a state water bottom shall assume responsibility for any infringement on privately owned water bottoms, or water bottoms owned by, or under the jurisdiction of any city, county, or district.

Comment. Section 24305 continues the last paragraph of former Fish and Game Code Section 15403 without change.

§ 24310. Lessee rights to organisms

24310. A lessee of a state water bottom owns all lawfully cultivated organisms that are described in the application for the lease and produced in the area leased. The lessee has the exclusive right to cultivate and harvest the aquatic organisms in the area leased.

Comment. Section 24310 continues former Fish and Game Code Section 15402 without change.

1 **§ 24315. Accommodation of public activity in leased area**

2 24315. (a) Lessees under a state water bottom lease may not unreasonably
3 impede public access to waters of the state for purpose of fishing, navigation,
4 commerce, or recreation.

5 (b) Notwithstanding subdivision (a), a lessee of a state water bottom may limit
6 public access to the extent necessary to avoid damage to the leasehold, or to the
7 aquatic life culture in the leasehold.

8 (c) The commission may prohibit any recreational activity in any aquaculture
9 area subject to a state water bottom lease, if it determines that the activity is
10 detrimental to the enhancement of the resource.

11 **Comment.** Section 24315 continues former Fish and Game Code Section 15411 without
12 substantive change.

13 **§ 24320. Termination of lease**

14 24320. (a) The commission shall adopt regulations governing the termination of
15 a state water bottom lease due to failure to pay rent, or improper use of the
16 leasehold.

17 (b) Upon termination of a state water bottom lease for any reason, all structures
18 shall be removed at the lessee's expense from the leasehold, and the area shall be
19 restored to its original condition. If the lessee fails to remove the structures, the
20 state may remove them and the lessee shall pay the removal costs incurred.

21 (c) The commission shall require financial assurances of each marine finfish
22 aquaculture lessee to ensure that restoration is performed to the satisfaction of the
23 commission. Financial assurances may take the form of surety bonds executed by
24 an admitted surety insurer, irrevocable letters of credit, trust funds, or other forms
25 of financial assurances specified by the commission, as it determines are available
26 and adequate to ensure the lease site is restored pursuant to this section.

27 (d) Marine finfish aquaculture lessees shall be responsible for any damages
28 caused by their operations, as determined by the commission, including, but not
29 limited to, reimbursement for any costs for natural resource damage assessment.

30 (e) Nothing in this section limits the state in pursuing additional remedies
31 authorized by law.

32 **Comment.** Subdivision (a) of Section 24320 continues former Fish and Game Code Section
33 15408 without substantive change.

34 Subdivisions (b) through (e) continue former Fish and Game Code Section 15409 without
35 substantive change.

36 **§ 24325. Assignment of lease**

37 24325. No water bottom lease may be assigned without the prior approval of the
38 commission. Application for approval of a lease assignment shall comply with all
39 of the requirements for an original lease.

40 **Comment.** Section 24325 continues former Fish and Game Code Section 15412 without
41 change.

1 CHAPTER 5. PROHIBITIONS

2 § 24400. Protection of leased area

3 24400. (a) No person may enter an area subject to a state water bottom lease in
4 which aquatic life is cultivated, or remove aquatic life from that area, without the
5 consent of the lessee, or willfully destroy the cultivated aquatic life or any markers
6 intended to designate the boundaries and limits of the leased area.

7 **Comment.** Section 24400 continues former Fish and Game Code Section 15413 without
8 substantive change.

9 TITLE 7. DISEASE CONTROL

10 CHAPTER 1. ADMINISTRATION

11 § 24500. Responsibilities for disease control

12 24500. (a) Upon the recommendation of the department and after consultation
13 with the Aquaculture Disease Committee created pursuant to this title, the
14 commission shall compile a list of diseases and parasites, and the aquatic plants
15 and animals they are known to infect or parasitize.

16 (b) All government activities relating to aquaculture disease detection, control,
17 and eradication that do not affect human health and safety are the responsibility of
18 the department.

19 **Comment.** Section 24500 continues former Fish and Game Code Section 15500 without
20 substantive change.

21 § 24505. Inspection of areas by department

22 24505. The department may enter, under an inspection warrant issued pursuant
23 to Title 5 (commencing with Section 1822.50) of Part 3 of the Code of Civil
24 Procedure, at any time, any car, warehouse, depot, ship, or growing area where
25 any aquatic plants or animals are held or stored, for the purpose of making an
26 examination to ascertain whether the aquatic plants or animals are infected,
27 diseased, or parasitized.

28 **Comment.** Section 24505 continues former Fish and Game Code Section 15501 without
29 change.

30 § 24510. Aquaculture Disease Committee

31 24510. (a) The director, in consultation with the Aquaculture Industry Advisory
32 Committee and the Interagency Committee for Aquaculture Development, shall
33 appoint an 11-member Aquaculture Disease Committee consisting of at least six
34 industry producers selected to represent geographic, specie, and other diverse
35 aspects of the industry; two to represent the department; one to represent the
36 Department of Food and Agriculture; an academic scientist who is an expert in

1 aquatic diseases; and one representative of the University of California
2 Cooperative Extension.

3 (b) Members of the committee shall serve without compensation, but shall be
4 paid their necessary expenses.

5 **Comment.** Section 24510 continues former Fish and Game Code Section 15502 without
6 substantive change.

7 **§ 24515. Recommendation of regulations**

8 24515. (a) The Aquaculture Disease Committee may recommend regulations to
9 the commission designed to safeguard wild and cultured organisms from the list of
10 harmful organisms compiled pursuant to Section 24500.

11 (b) Regulations recommended by the committee and adopted by the commission
12 may include all of the following:

13 (1) Routine monitoring procedures.

14 (2) Standardized diagnostic procedures.

15 (3) A requirement for the confirmation of the diagnosis by the state through at
16 least one other independent and qualified laboratory.

17 (4) Criteria for ordering quarantine, condemnation, or destruction.

18 (5) A stated maximum time period between diagnosis and destruction.

19 (6) Methods to be employed in animal destruction and facility cleanup.

20 (7) Procedures for determining fair and rapid compensation.

21 (8) Any other related procedures that the commission may determine are
22 necessary.

23 **Comment.** Subdivision (a) of Section 24515 continues former Fish and Game Code Section
24 15503 without substantive change.

25 Subdivision (b) continues former Fish and Game Code Section 15504 without substantive
26 change.

27 **§ 24520. Authorized action by director**

28 24520. If any disease or parasite listed pursuant to Section 24500 is found to
29 exist that the director, in consultation with the Aquaculture Disease Committee
30 and consistent with the regulations adopted pursuant to Section 24515, deems to
31 be detrimental to the aquaculture industry or to wild stocks of aquatic plants and
32 animals, the director may do any of the following:

33 (a) Establish the area to be quarantined and list the aquatic plants and animals
34 affected by it.

35 (b) Post notices describing, as nearly as possible, the boundaries of an area
36 within which specific disease or parasite infestations are found. Notices posted
37 pursuant to this subdivision shall be published once a week for four successive
38 weeks in a newspaper of general circulation in the county in which the infected
39 area is located. If there is no newspaper of general circulation in that county, then
40 the notice shall be published in a newspaper of general circulation published in an
41 adjoining county.

42 (c) Hold and impound diseased or parasitized plants and animals.

(d) Forbid, prevent, or restrict the movement of all plants and animals subject to the disease or parasite from or into the area, or from place to place within it, during the existence of the quarantine.

(e) Order the destruction and disposal of diseased or parasitized plants and animals consistent with Section 24515.

Comment. Section 24520 continues former Fish and Game Code Section 15505 without substantive change.

§ 24525. Quarantine or destruction of other plants or animals infected with nonlisted disease

24525. Except for those diseases in the list compiled pursuant to Section 24500, a plant or animal shall not be quarantined or destroyed, unless the director, in consultation with the Aquaculture Disease Committee, finds that an outbreak of aquatic disease among privately cultured plants or animals presents a threat to the aquaculture industry or to fish life or plant life.

Comment. Section 24525 continues former Fish and Game Code Section 15506 without substantive change.

§ 24530. Coordination of action in government and private facilities

24530. If the director, in consultation with the Aquaculture Disease Committee, finds that a disease is present in a nearby government operated facility or in nearby wild stocks, infected plants or animals in a private aquaculture facility shall not be quarantined or destroyed unless similar action is taken with respect to the government facility and wild stocks.

Comment. Section 24530 restates former Fish and Game Code Section 15507 without change.

§ 24535. Investigation of reported disease or parasite

24535. Reports of diseases and parasites compiled pursuant to Section 24500 shall be immediately forwarded by the director to the Aquaculture Disease Committee, and shall be promptly investigated by the department.

Comment. Section 24535 continues former Fish and Game Code Section 15508 without substantive change.

§ 24540. Prevention of importation of diseased aquatic plant or animal

24540. (a) If the director determines that a disease designated pursuant to Section 24500 exists among domestic aquatic plants and animals, or that aquatic plants and animals have been exposed, or may have been exposed, to the disease, or to the vectors of the disease, in any other state or territory in the United States, or in any foreign country, and the importation of aquatic plants or animals from that state, territory, or foreign country may transmit, carry, or disseminate the disease to domestic plants and animals within this state, the director shall notify the commission.

(b) The commission, after consulting the State Department of Health Care Services and the Department of Food and Agriculture, may issue a regulation restricting or prohibiting the importation of the diseased or infected aquatic plants or animals into this state from any other state, territory, or foreign country.

Comment. Section 24540 continues former Fish and Game Code Section 15510 without substantive change.

§ 24545. Permit to move quarantined plant or animal

24545. No person may move, or allow to be moved, any of the aquatic plants or animals that are subject to a quarantine established pursuant to Section 24520 across the quarantine line that is established, unless the person has first obtained a permit from the director authorizing the movement. The director may issue a permit after inspection, if the aquatic plants, animals, premises, transportation vehicles, and equipment that are subject to the quarantine established pursuant to Section 24520 are properly cleaned and disinfected.

Comment. Section 24545 continues former Fish and Game Code Section 15509 without substantive change.

CHAPTER 2. CLAIMS

§ 24600. Compensation to owner of destroyed plant or animal

24600. (a) If aquatic plants or animals are destroyed pursuant to subdivision (e) of Section 24520, and a claim is submitted pursuant to Section 24605, the owner shall be promptly paid from the General Fund an amount equal to 75 percent of the replacement value of the plants or animals, less the value determined by the department of any replacement stock provided by the department under subdivision (b). If the replacement value is not settled between the owner and the department, the replacement value shall be determined by an appraiser appointed by the director and an appraiser appointed by the owner. Appraiser's fees shall be paid by the appointing party. Disputes between these two appraisers shall be submitted to arbitration under the Commercial Arbitration Rules of the American Arbitration Association.

(b) If the department provides replacement stock to an aquaculturist whose plants or animals are destroyed pursuant to subdivision (e) of Section 24520, the amount to be paid to the aquaculturist pursuant to this section shall be reduced by the value of the replacement stock, as determined by the department.

(c) The result of the arbitration or the amount settled between the owner and the department, reduced by the value determined by the department of any replacement stock provided under subdivision (b), may be submitted as a claim by the owner to the Department of General Services pursuant to Section 24605.

Comment. Section 24600 restates former Fish and Game Code Section 15512 without substantive change.

Note. The first sentence of proposed Section 24600(a) is intended to restate the first sentence of existing Fish and Game Code Section 15512(a), to clarify the meaning of that provision, without changing its substantive meaning. The existing sentence reads as follows:

“15512. (a) If aquatic plants or animals are destroyed pursuant to subdivision (e) of Section 15505, the owner shall be promptly paid from the General Fund an amount equal to 75 percent of the replacement value of the plants or animals, less the value determined by the department of any replacement stock provided by the department under subdivision (b) if the claim is submitted pursuant to Section 15513.”

The Commission invites comment on whether the first sentence of proposed Section 24600(a) accurately continues the intended meaning of the first sentence of existing Section 15512(a).

§ 24605. Claims against the department

24605. Claims against the department arising under this title may be submitted pursuant to Section 905.2 of the Government Code.

Comment. Section 24605 continues former Fish and Game Code Section 15513 without change.

§ 24610. Disallowing of claim

24610. No claim arising under this title shall be paid where the director, in consultation with the Aquaculture Disease Committee, finds that the claimant’s management practices were negligent or in violation of law, and that the negligence or violation was the proximate cause of the disease or infection prompting the order of destruction or finds that the claimant willfully violated any provision of Section 24520.

Comment. Section 24610 continues former Fish and Game Code Section 15514 without substantive change.

§ 24615. Liability for disease eradication

24615. (a) The owner of an aquaculture product who does not diligently pursue the eradication of a disease from its facility when ordered to do so by the director shall be responsible for paying to the director the full costs of the department for all disease eradication efforts conducted by the department to eradicate the disease.

(b) Payment of the costs under this section shall not excuse compliance with the provisions of law, regulations of the commission, or orders of the director, nor be a defense in any criminal or civil proceeding.

Comment. Section 24615 continues former Fish and Game Code Section 15516 without substantive change.

**TITLE 8. IMPORTATION OF AQUATIC PLANTS
AND ANIMALS**

§ 24700. Application of title

24700. (a) Nothing in this title prohibits the importation of Atlantic salmon or

1 the roe of Atlantic salmon, or the continued possession of Atlantic salmon or the
2 roe of Atlantic salmon that were lawfully imported or possessed in the Smith
3 River watershed on or before February 22, 1988, under a written approval of the
4 department issued pursuant to Section 24705 or 24710.

5 (b) Nothing in this title applies to the importation or possession of dead Atlantic
6 salmon or nonviable roe of Atlantic salmon imported for human consumption, if
7 the importer has the appropriate licenses issued by the department.

8 **Comment.** Section 24700 continues former Fish and Game Code Section 15605 without
9 substantive change.

10 **§ 24705. Required approval by department**

11 24705. No live aquatic plant or animal may be imported into this state by a
12 registered aquaculturist without the prior written approval of the department,
13 pursuant to the regulations adopted by the commission.

14 **Comment.** Section 24705 continues former Fish and Game Code Section 15600(a) without
15 change.

16 **§ 24710. Prohibited importation**

17 24710. (a) Except as provided in subdivision (b), the department shall not
18 approve a person's importation of, or renew a person's permit to import, any
19 anadromous fish or roe from an anadromous fish listed in Section 26520, or the
20 regulations adopted pursuant to Section 26520, into the Smith River watershed,
21 unless that person had a permit or authorization approved before February 22,
22 1988.

23 (b) The department may issue or renew a permit for the importation of any
24 anadromous fish or roe from an anadromous fish specifically for research purposes
25 conducted at any university, college, governmental research agency, or other bona
26 fide scientific institution, as determined by the department, engaging in scientific
27 or public health research.

28 **Comment.** Section 24710 continues former Fish and Game Code Section 15600(b) without
29 substantive change.

30 **§ 24715. Application for importation**

31 24715. A written application for the importation of a live aquatic plant or animal
32 that is submitted in conformance with the procedural requirements established by
33 the commission is deemed to be approved if it has not been denied within 60 days.

34 **Comment.** Section 24715 restates former Fish and Game Code Section 15601 without
35 substantive change.

36 **Note.** Proposed Section 24715 is intended to restate existing Fish and Game Code Section
37 15601 to clarify the meaning of that provision, without changing its substantive meaning. The
38 existing provision reads as follows:

39 "15601. A written application for the importation submitted in conformance with the
40 procedural requirements established by the commission is deemed to be approved where it has
41 not been denied within 60 days."

The Commission invites comment on whether proposed Section 24715 accurately continues the intended substantive meaning of existing Section 15601.

§ 24720. Application of California Environmental Quality Act

24720. No facility constructed for the purpose of spawning, incubating, or raising of anadromous fish listed in Section 26520 in the Smith River watershed is exempt from any provision of the California Environmental Quality Act.

Comment. Section 24720 continues former Fish and Game Code Section 15604 without substantive change.

**TITLE 9. AQUACULTURE DEVELOPMENT
COMMITTEE**

§ 24800. Composition of committee

24800. (a) The director shall appoint an Aquaculture Development Committee, consisting of the following persons:

(1) At least 12 members representing all sectors of the fresh and salt water aquaculture industry.

(2) One member representing the department, two members from and chosen by the University of California, one with expertise in aquaculture science and one with expertise in outreach to the fisheries community, and one member each from and chosen by the Department of Food and Agriculture, the California Coastal Commission, the State Lands Commission, the State Water Resources Control Board, the State Department of Public Health, and the Joint Legislative Committee on Fisheries and Aquaculture.

(b) The member of the committee appointed by the Joint Legislative Committee on Fisheries and Aquaculture shall meet and, except as otherwise provided by the California Constitution, advise the committee, to the extent that this advisory participation is not incompatible with his or her position as a Member of the Legislature.

Comment. Section 24800 continues former Fish and Game Code Section 15700 without substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of specified references in former Fish and Game Code to State Department of Health Services).

Note. The reference in existing Fish and Game Code Section 15700 to the State Department of Health Services would be revised by proposed Section 24800 to instead refer to the State Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and 131052(6).

The Commission invites comment on whether that revision is appropriate.

§ 24805. Term of membership

24805. (a) The term of membership for members of the committee other than representatives of public agencies shall be three years.

(b) The representatives of public agencies shall serve at the pleasure of the agency that the member represents.

Comment. Section 24805 continues former Fish and Game Code Section 15701(a) without substantive change.

§ 24810. Compensation

24810. Members of the committee shall serve without compensation.

Comment. Section 24810 continues former Fish and Game Code Section 15701(b) without change.

§ 24815. Meetings

24815. The committee shall meet on the call of the director, but not less than twice each year.

Comment. Section 24815 continues former Fish and Game Code Section 15703 without change.

§ 24820. Function of committee

24820. (a) The committee shall be advisory to the director on all matters pertaining to aquaculture and shall coordinate activities among public entities.

(b) The committee shall assist the director in developing and implementing a state aquaculture plan, identify the opportunities for regulatory relief, assist in development of research and development priorities, assist in the development of criteria to assure that publicly financed pilot programs are compatible with industry needs, and identify other opportunities for industrial development.

Comment. Section 24820 continues former Fish and Game Code Section 15702 without change.

TITLE 10. PROHIBITIONS

CHAPTER 1. GENERAL PROVISIONS

§ 24900. Unlawful taking

24900. Any person who takes an aquaculture product without lawful entitlement is subject to prosecution for theft.

Comment. Section 24900 continues former Fish and Game Code Section 15002 without substantive change.

§ 24905. Prohibited fish cultural operations

24905. Except under permit of the department, it is unlawful to carry on fish cultural operations on any stream above a point where water is diverted for the use and operation of a state fish hatchery.

Comment. Section 24905 continues former Fish and Game Code Section 5511 without substantive change.

CHAPTER 2. EXOTIC OR TRANSGENIC SPECIES

§ 24950. Application of chapter

24950. (a) Nothing in this chapter applies to salmon or steelhead trout reared from native California stocks that are propagated and cultured for either of the following:

(1) Research conducted by, or on behalf of, the department.

(2) Release into ocean waters for the purpose of recovery, restoration, or enhancement of California's native salmon and steelhead trout populations pursuant to Chapter 2 (commencing with Section 11800) of Title 2 of Part 4 of Division 6, and Section 25125.

(b) Nothing in this chapter authorizes artificial propagation, rearing, or stocking of transgenic freshwater and marine fishes, invertebrates, crustaceans, or mollusks.

Comment. Subdivision (a) of Section 24950 continues the third sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (b) continues the former Fish and Game Code Section 15007(b) without substantive change.

§ 24955. Definitions

24955. The following definitions govern the provisions of this chapter:

(a) "Exotic species" means a fish that is not native to California waters, and that does not currently exist as a viable population in a wild condition in the state.

(b) "Transgenic" has the meaning specified in Section 1.92 of Title 14 of the California Code of Regulations, as that section read on May 14, 2003.

Comment. Section 24955 continues former Fish and Game Code Section 15007(f) without substantive change.

§ 24960. Prohibitions

24960. (a) In the waters of the Pacific Ocean that are regulated by this state, it is unlawful to spawn, incubate, or cultivate any species of finfish belonging to the family Salmonidae, any transgenic fish species, or any exotic species of finfish.

(b) Except as authorized pursuant to Section 24965, it is unlawful to spawn, incubate, or cultivate any transgenic species of finfish belonging to the family Salmonidae in this state.

(c) Research or experimentation for the commercial production of transgenic salmonids is prohibited.

Comment. Subdivision (a) of Section 24960 continues the first sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 15007(a) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 15007(c) without change.

1 **§ 24965. Research pursuant to permit**

2 24965. (a) Medical or scientific research conducted on transgenic finfish species
3 by accredited California academic institutions or private entities for research only
4 and not for commercial production may be authorized pursuant to a permit issued
5 by the department pursuant to Section 671 of Title 14 of the California Code of
6 Regulations, as that section read on May 14, 2003.

7 (b) At a minimum, research activities conducted pursuant to this section shall be
8 conducted in a closed system that has eliminated the risk of escape of transgenic
9 finfish species and any potential disease they may transmit.

10 (c) A permit application applied for pursuant to this section shall include a
11 research plan specifying the objectives and goals of the proposed research.

12 (d) Nothing in this section shall be construed to require the disclosure of
13 proprietary information.

14 **Comment.** Section 24965 continues former Fish and Game Code Section 15007(d) without
15 substantive change.

16 **§ 24970. Notification of permit application**

17 24970. The department shall notify the Joint Committee on Fisheries and
18 Aquaculture and the commission upon receipt of a permit application applied for
19 pursuant to Section 24965, at least 30 days prior to the approval or disapproval of
20 the permit.

21 **Comment.** Section 24970 continues former Fish and Game Code Section 15007(e) without
22 substantive change.

23 **PART 2. FISH HATCHERIES**

24 **TITLE 1. FISH HATCHERIES GENERALLY**

25 **§ 25100. Fish hatcheries**

26 25100. The commission shall establish fish hatcheries for stocking the waters of
27 the state with fish. The department shall maintain and operate the hatcheries.

28 **Comment.** Section 25100 continues former Fish and Game Code Section 1120 without
29 substantive change.

30 **§ 25105. Liability arising from lease of real property**

31 25105. (a) Whenever the state leases real property from any county, city,
32 irrigation district, or other public agency in this state for the purpose of
33 establishing or maintaining a fish hatchery, the state may agree to indemnify and
34 hold the lessor harmless for uses authorized by that lease.

35 (b) Insurance may be purchased by the Department of General Services to
36 protect the state against loss or expense arising out of an agreement entered into
37 pursuant to subdivision (a).

1 **Comment.** Section 25105 continues former Fish and Game Code Section 1121 without
2 substantive change.

3 **§ 25110. Claim for damages**

4 25110. Any claim for damages arising against the state under Section 25105
5 shall be presented to the Department of General Services in accordance with
6 Section 905.2 of the Government Code, and if not covered by insurance provided
7 pursuant to Section 25105, the claim shall be payable only out of funds
8 appropriated by the Legislature for that purpose. If the state elects to insure its
9 liability under Section 25105, the Department of General Services may
10 automatically deny the claim.

11 **Comment.** Section 25110 continues former Fish and Game Code Section 1122 without
12 substantive change.

13 **§ 25115. Bird exclosures**

14 25115. Notwithstanding any other provision of law, department personnel may
15 construct or repair bird exclosures at state owned or operated fish hatcheries.
16 These activities shall not be subject to review by the Public Works Board. Nothing
17 in this section exempts the department from complying with any provision of law
18 governing services performed under contract by noncivil service employees.

19 **Comment.** Section 25115 continues former Fish and Game Code Section 1126 without
20 change.

21 **§ 25120. County fish hatcheries**

22 25120. The boards of supervisors of the several counties may establish and
23 maintain fish hatcheries, and may purchase the spawn or ova of fish.

24 **Comment.** Section 25120 continues former Fish and Game Code Section 1150 without
25 change.

26 **§ 25125. Nonprofit hatcheries**

27 25125. (a) The department shall encourage nonprofit hatcheries and nonprofit
28 artificial propagation operations, operated by, or on behalf of, licensed fishermen,
29 for the purpose of rebuilding or enhancing marine fish populations, including, but
30 not limited to, those for Dungeness crab, sea urchin, and California halibut,
31 consistent with the protection of these species in the wild, in order to provide
32 sustainable marine fish populations for harvest by commercial and recreational
33 fishermen.

34 (b) The department shall, to the extent funds and personnel are available,
35 cooperate with these nonprofit hatcheries and nonprofit artificial propagation
36 operations in determining the feasibility, siting, and establishment of those
37 activities and sharing technical information to ensure the protection of the marine
38 environment.

39 **Comment.** Section 25125 continues former Fish and Game Code Section 6903.5 without
40 substantive change.

1 **§ 25130. Mount Whitney Fish Hatchery**

2 25130. (a) Notwithstanding any other provision of law, the Director of General
3 Services, with the consent of the department, may lease to the Friends of the
4 Mount Whitney Fish Hatchery, at no cost, and subject to any other terms and
5 conditions that the director deems appropriate, for a term not to exceed 25 years
6 and with the possibility of renewal, the Mount Whitney Fish Hatchery, or any part
7 of the hatchery.

8 (b) Any part of the hatchery that is leased pursuant to subdivision (a) shall be
9 used for environmental education purposes and other related activities designed to
10 benefit the hatchery and the community.

11 (c) The lease shall require the Friends of the Mount Whitney Fish Hatchery to
12 permit reasonable public access to the hatchery, to obtain and maintain liability
13 insurance for the leased portion of the hatchery, and to maintain the leased portion
14 of the hatchery at all times. The lease shall provide that any work done on the
15 hatchery shall be performed in consultation with the State Office of Historic
16 Preservation. The lease shall also provide that the state, agents of the state, the
17 department, and agents of the department shall be held harmless from, and
18 indemnified against, any liability resulting from any act or omission of the Friends
19 of the Mount Whitney Fish Hatchery arising out of performance of the lease.

20 **Comment.** Section 25130 restates former Fish and Game Code Section 1122.5 without
21 substantive change.

22 **Note.** Proposed Section 25130 is intended to restate the part of existing Fish and Game Code
23 Section 1122.5 to improve its clarity, without changing its substantive effect. The existing
24 provision reads as follows:

25 “1122.5. Notwithstanding any other provision of law, the Director of General Services, with
26 the consent of the department, may lease to the Friends of the Mount Whitney Hatchery, at no
27 cost, and subject to any other terms and conditions that the director deems appropriate, for a term
28 not to exceed 25 years, and with the possibility of renewal, the Mount Whitney Fish Hatchery
29 facilities, or any portion thereof, situated in the County of Inyo. The leased portion of the building
30 shall be used for environmental education purposes and other related activities designed to benefit
31 the hatchery and the community. The lease shall require the Friends of the Mount Whitney Fish
32 Hatchery to permit reasonable public access to the facility, to obtain and maintain liability
33 insurance for the leased portion of the facility, and to maintain the leased portion of the facility at
34 all times. The lease shall provide that any work done on the facility shall be performed in
35 consultation with the State Office of Historic Preservation. The lease shall also provide that the
36 state, agents of the state, the department, and agents of the department shall be held harmless
37 from, and indemnified against, any liability resulting from the acts or omissions of the Friends of
38 the Mount Whitney Fish Hatchery performed in the course of the lease agreement.”

39 **The Commission invites comment on whether the restatement would cause any**
40 **substantive change in the meaning of the provision.**

41 **§ 25135. Transgenic species of salmonids**

42 25135. (a) The hatchery production and stocking of transgenic species of
43 salmonids is prohibited.

(b) As used in this section, “transgenic” has the same meaning as in Section 1.92 of Title 14 of the California Code of Regulations, as that section read on May 14, 2003.

Comment. Section 25135 continues former Fish and Game Code Section 1210 without change.

TITLE 2. ANADROMOUS FISH HATCHERIES

§ 25200. Permit to operate hatchery

25200. The commission may issue a permit, subject to such restrictions and regulations as the commission deems desirable, to a nonprofit organization to construct and operate an anadromous fish hatchery.

Comment. Section 25200 continues former Fish and Game Code Section 1170 without change.

§ 25205. Financial capability

25205. The commission shall not issue a permit unless it determines the nonprofit organization has the financial capability to successfully construct and operate the hatchery and will diligently and properly conduct the operation authorized under the permit.

Comment. Section 25205 continues former Fish and Game Code Section 1171 without change.

§ 25210. Restrictions

25210. No permit will be issued which may tend to deplete the natural runs of anadromous fish, result in waste or deterioration of fish, or when the proposed operation is located on a stream or river below a state or federal fish hatchery or egg-taking station.

Comment. Section 25210 continues former Fish and Game Code Section 1172 without change.

§ 25215. Fish property of state

25215. All fish handled under authority of this chapter during the time they are in the hatchery or in the wild are the property of the state and when in the wild may be taken under the authority of a sport or commercial fishing license as otherwise authorized for wild fish.

Comment. Section 25215 continues former Fish and Game Code Section 1173 without change.

§ 25220. Conditions of permit

25220. Any permit granted by the commission pursuant to this chapter shall contain all of the following conditions:

(a) If after a hearing the commission finds that the operation described in the permit and conducted pursuant to this chapter is not in the best public interest, the commission may alter the conditions of the permit to mitigate the adverse effects, or may cause an orderly termination of the operation under the permit. An orderly termination shall not exceed a three-year period and shall culminate in the revocation of the permit in its entirety.

(b) If the commission finds that the operation has caused deterioration of the natural run of anadromous fish in the waters covered by the permit, it may require the permittee to return the fishery to the same condition as was prior to issuance of the permit. If the permittee fails to take appropriate action, the commission may direct the department to take the action, and the permittee shall bear any cost incurred by the department.

(c) Prior to release into waters of the state and at any other time deemed necessary by the department, the fish may be examined by the department to determine that they are not diseased or infected with any disease which, in the opinion of the department, may be detrimental to the state fishery resources.

Comment. Section 25220 continues former Fish and Game Code Section 1174 without change.

§ 25225. Disclaimer of state liability

25225. The state shall assume no responsibility for the operation of a hatchery pursuant to this chapter and shall not be in any manner liable for its operation.

Comment. Section 25225 continues former Fish and Game Code Section 1175 without change.

TITLE 3. COOPERATIVE SALMON AND STEELHEAD REARING FACILITIES

§ 25300. Department agreement

25300. (a) The department is authorized to enter into agreements with counties, nonprofit groups, private persons, individually or in combination, for the management and operation of rearing facilities for salmon and steelhead. All agreements shall be in accordance with the policies of the commission and the criteria of the department that govern the operation of those facilities under those agreements.

(b) The purpose for operating the facilities shall be to provide additional fishing resources and to augment natural runs.

Comment. Section 25300 continues former Fish and Game Code Section 1200 without substantive change.

§ 25305. Demonstration of financial ability

25305. (a) An applicant who wishes to enter into an agreement to operate a rearing facility shall demonstrate, to the satisfaction of the department prior to

1 executing the agreement, the applicant's financial ability to properly operate the
2 rearing facility.

3 (b) The department shall develop and specify the means for an applicant to make
4 such a demonstration.

5 **Comment.** Section 25305 continues former Fish and Game Code Section 1201 without
6 substantive change.

7 **§ 25310. Property of state**

8 25310. All fish handled or released under authority of this title are the property
9 of the state and may be taken only after their release into the wild and under the
10 authority of a sport or commercial fishing license.

11 **Comment.** Section 25310 continues the part of former Fish and Game Code Section 1202
12 without substantive change.

13 **§ 25315. Release determined by Commission**

14 25315. The release of fish reared in facilities pursuant to this title shall be made
15 in accordance with the policy of the commission.

16 **Comment.** Section 25315 continues former Fish and Game Code Section 1203 without
17 substantive change.

18 **§ 25320. Funding of agreements**

19 25320. (a) The department shall fund the agreements provided for in Section
20 25300 only on a matching basis with the persons or entities who enter into those
21 agreements. Funds appropriated for the purposes of this title shall not be used to
22 purchase equipment or for construction.

23 (b) The department shall be reimbursed from funds appropriated for the
24 purposes of this title for administrative costs, legal costs, and supervisorial costs
25 relating to the execution and supervision of agreements provided for in Section
26 25300 by the department.

27 **Comment.** Section 25320 continues former Fish and Game Code Section 1204 without
28 substantive change.

29 **§ 25325. Department to make fish available**

30 25325. The department shall, subject to the limitations of appropriate egg
31 sources and funding, make available fish of appropriate size and species to persons
32 or entities who enter into agreements pursuant to this title.

33 **Comment.** Section 25325 continues former Fish and Game Code Section 1205 without
34 substantive change.

35 **§ 25330. Location of release**

36 25330. Salmon and steelhead raised pursuant to this title shall be released in
37 streams, rivers, or waters north of Point Conception and upon release shall have
38 unimpeded access to the sea.

1 **Comment.** Section 25330 continues former Fish and Game Code Section 1206 without
2 substantive change.

3 PART 3. FISH PLANTING

4 TITLE 1. GENERAL PROVISIONS

5 **§ 25400. Application of part**

6 25400. This part does not apply to activities governed by Division 12
7 (commencing with Section 23300).

8 **Comment.** Section 25400 continues former Fish and Game Code Section 6403 without
9 change.

10 **§ 25405. Spawn and ova**

11 25405. The department may purchase and import spawn or ova of fish suitable
12 for food, and stock the waters of the state with that spawn or ova.

13 **Comment.** Section 25405 continues former Fish and Game Code Section 1123 without
14 substantive change.

15 **§ 25410. Permit to stock fish**

16 25410. Any person may, under the terms of a permit first obtained from the
17 department, under regulations the commission may adopt, purchase or receive live
18 fish from any registered aquaculturist, and may stock the fish in a stream or a lake.

19 **Comment.** Section 25410 continues former Fish and Game Code Section 6401 without
20 change.

21 **§ 25415. Planting of fish**

22 25415. It is unlawful to place, plant, or cause to be placed or planted, in any of
23 the waters of the state, any live fish, any fresh or salt water animal, or any aquatic
24 plant, whether taken without or within the state, without first submitting it for
25 inspection to, and securing the written permission of, the department.

26 **Comment.** Section 25415 continues former Fish and Game Code Section 6400 without
27 change.

28 **§ 25420. Fish cultural operations and scientific investigations**

29 25420. The Secretary of the Interior of the United States and the secretary's duly
30 authorized agents may conduct fish cultural operations and scientific
31 investigations in the waters of the state in a manner and at times as may be jointly
32 considered necessary and proper by the secretary and the secretary's agents, and
33 the commission.

34 **Comment.** Section 25420 continues former Fish and Game Code Section 1125 without
35 substantive change.

TITLE 2. AQUATIC NUISANCE SPECIES

§ 25500. Criminal punishment for planting

25500. (a) Notwithstanding subdivision (b) of Section 4400, any person who violates Section 25415 through the use of an aquatic nuisance species is guilty of a misdemeanor, punishable by all of the following:

(1) Imprisonment in the county jail for not less than six months or more than one year, a fine of not more than fifty thousand dollars (\$50,000) for each violation, or both that imprisonment and fine.

(2) Revocation of all of the defendant's licenses and permits issued pursuant to this code.

(b) A person who personally or through another violates Section 25415, through the use of an aquatic nuisance species, is liable to the owner of any privately or publicly owned property for any damages to that property caused by the violation. A person who violates Section 25415 through the use of an aquatic nuisance species shall also be liable for all monetary damages directly, indirectly, and proximately caused thereby, including, but not limited to, damages to any commercial fishery, sport fishery, or to the public communities which depend upon those fisheries for a portion of their annual income. The Attorney General may file a civil action on behalf of the fisheries or communities that are damaged as a result of the violation. In addition, a private citizen who suffers damages as a result of the violation may file a civil action against the violator.

(c) A person who allows an aquatic nuisance species to escape from his or her property to the property of another, whether privately or publicly owned, is liable to the owner of the intruded upon property for any damages caused by the species.

(d) This section shall not apply to the placement of any live fish, any fresh or salt water animal, or any aquatic plant from the discharge or exchange of ballast water from any vessel as defined by Section 21 of the Harbors and Navigation Code.

(e) This section does not apply to the placement of an aquatic plant by a person who was unaware that he or she was in possession of the plant. This exception includes circumstances in which a plant becomes unknowingly and temporarily attached or affixed to a boat, boat trailer, or boat motor.

Comment. Section 25500 continues former Fish and Game Code Section 12023 without substantive change.

Note. Existing Fish and Game Code Section 12023 (which would be continued by proposed Section 25500) provides special punishment for violating existing Fish and Game Code Section 6400 (which would be continued by proposed Section 25415), "through the use of an aquatic nuisance species, as defined in Section 6431." Existing Fish and Game Code Sections 12024 (which would be continued by proposed Section 25505) and 12026 (which would be continued by proposed Section 25510) also both refer to a person violating Section 6400 "through the use of an aquatic nuisance species."

However, former Fish and Game Code Section 6431 was repealed in 2003 (see 2003 Cal. Stat. ch. 610) and there is now no definition of the term "aquatic nuisance species" in either the

existing code, or in any current regulation adopted pursuant to the existing code.

The Commission invites comment on whether the current absence of a definition of the term “aquatic nuisance species” in the existing code is problematic, and should be addressed in the proposed law.

§ 25505. Civil liability

25505. (a) In addition to Section 25500, a person who violates Section 25415 through the use of an aquatic nuisance species is liable for all public and private response, treatment, and remediation efforts resulting from the violation. The cost of these efforts shall constitute a debt of that person, and shall be collectible by the federal, state, county, public agency, or private individual or individuals, incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Public agencies participating in a response to a violation of Section 25415 through the use of an aquatic nuisance species may designate one or more of the participating agencies to bring an action to recover costs incurred by all of the participating agencies.

(c) The costs relating to an accounting for a violation of Section 25415 through the use of an aquatic nuisance species and the collection of any funds, including, but not limited to, the administrative, legal, and public relations costs of operating a response and remediation program may also be the subject of an action to recover costs which are charged against the responsible person.

Comment. Section 25505 continues former Fish and Game Code Section 12024 without substantive change.

§ 25510. Reward

25510. Any person whom the department determines has provided evidence or information leading to the arrest and conviction of a person or persons found guilty of violating Section 25415 through the use of an aquatic nuisance species, is eligible to obtain a reward of up to fifty thousand dollars (\$50,000) pursuant to Section 4300.

Comment. Section 25510 continues former Fish and Game Code Section 12026 without substantive change.

TITLE 3. ARTIFICIAL REEFS

§ 25600. Legislative findings and declaration

25600. The Legislature finds and declares all of the following:

(a) Declines in various southern California marine species of fish have adversely affected the sport and commercial fishing industry.

(b) Efforts to enhance these species through the placement of artificial reefs need to be investigated.

1 (c) A program of artificial reef research and development, including reef design,
2 placement, and monitoring, is in the public interest and can best be accomplished
3 under the administration of the department with the cooperation and assistance of
4 the University of California, the California State University, other established,
5 appropriate academic institutions, and other organizations with demonstrated
6 expertise in the field.

7 (d) A state artificial reef research and construction program under the
8 administration of the department is necessary to coordinate ongoing studies and
9 construction of artificial reefs in waters of the state.

10 **Comment.** Section 25600 continues former Fish and Game Code Section 6420 without
11 change.

12 **§ 25605. Definitions**

13 25605. For purposes of this title, the following terms have the following
14 meaning:

15 (a) “Artificial reef” means manmade or natural objects intentionally placed in
16 selected areas of the marine environment to duplicate those conditions that induce
17 production of fish and invertebrates on natural reefs and rough bottoms, and that
18 stimulate the growth of kelp or other midwater plant life which creates natural
19 habitat for those species.

20 (b) “Production” means increases in the biomass of a species or number of
21 species.

22 (c) “Program” means the California Artificial Reef Program.

23 **Comment.** Section 25605 continues former Fish and Game Code Section 6421 without
24 substantive change.

25 **§ 25610. Department administration**

26 25610. The department shall administer the California Artificial Reef Program.

27 **Comment.** Section 25610 continues former Fish and Game Code Section 6422 without
28 change.

29 **§ 25615. Elements of program**

30 25615. The program shall include all of the following:

31 (a) The placement of artificial reefs in state waters.

32 (b) A study of existing successful reefs and all new reefs placed by the program
33 to determine the design criteria needed to construct artificial reefs capable of
34 increasing fish and invertebrate production in waters of the state.

35 (c) A determination of the requirements for reef siting and placement.

36 **Comment.** Section 25615 continues former Fish and Game Code Section 6423 without
37 change.

1 **§ 25620. Allocation**

2 25620. (a) The amount allocated for the administration of the program in any
3 fiscal year may not exceed the amount authorized by applicable state and federal
4 policy guidelines.

5 (b) It is the intent of the Legislature that future sources of funding for the
6 program may include, but are not limited to, the Fish and Game Preservation
7 Fund, the California Environmental License Plate Fund, the Wildlife Restoration
8 Fund, recreational bond act funds, federal grants-in-aid, county fish and game
9 propagation funds, and private donations.

10 **Comment.** Subdivision (a) of Section 25620 continues former Fish and Game Code Section
11 6424 without change.

12 Subdivision (b) continues former Fish and Game Code Section 6425(b) without change.

13 **Note.** Existing Fish and Game Code Section 6425(a), referring to the California Artificial
14 Reef program, reads as follows:

15 “(a) It is the intent of the Legislature that not more than five hundred thousand dollars
16 (\$500,000) shall be allocated to the program for the 1985–86 fiscal year.”

17 **The Commission invites comment on whether this provision is now obsolete, and may be**
18 **discontinued in the proposed law.**

19 **TITLE 4. OCEAN FISHERY RESEARCH**

20 **§ 25700. Legislative findings and declaration**

21 25700. The Legislature finds and declares all of the following:

22 (a) Substantial declines in various species of desirable fish that are caught in
23 southern California ocean waters have adversely affected recreational and
24 commercial fishing and their related industries.

25 (b) Research and development of artificial propagation, rearing, and stocking
26 techniques and equipment have been sufficiently developed. The purpose of this
27 chapter is to determine if hatchery-released fish can artificially enhance certain
28 stocks of various desirable species, through increased hatchery production of fish
29 and increased monitoring of fisheries to assess the contribution of hatchery-
30 released fish to that enhancement.

31 (c) Funding for research pertaining to enhancement and artificial propagation,
32 rearing, and stocking are most appropriately borne by a special fund derived from
33 user fees on recreational and commercial fishermen who stand to directly benefit
34 from the resurgence of depressed marine fisheries.

35 (d) The department has continuing resource management, administrative, and
36 policy review responsibility in marine resources issues.

37 (e) Volunteers from the recreational fishing community have developed and
38 operated grow-out facilities with private funding. These volunteer activities
39 greatly enhance the effectiveness of the program and are fully compatible with the
40 overall program objectives.

(f) As white sea bass hatchery production is established, additional grow-out facilities will be required and coordination between these facilities will be necessary. The ocean resources enhancement advisory panel may encourage contracts to carry out coordination activities and recommend to the director that this coordination remain a high priority. Those coordination activities may be funded with fees collected by the department pursuant to this title.

(g) The use of federal matching funds, including sportfish restoration account funds, shall be a high priority for use to match state dollars for this program.

Comment. Section 25700 continues former Fish and Game Code Section 6590 without substantive change.

§ 25705. Definitions

25705. For purposes of this title, “program” means the California Ocean Resources Enhancement and Hatchery Program established by this title.

Comment. Section 25705 continues former Fish and Game Code Section 6591 without substantive change.

§ 25710. Purpose of program

25710. There is hereby established in state government the California Ocean Resources Enhancement and Hatchery Program, for the purpose of basic and applied research on the artificial propagation, rearing, stocking, and distribution of adversely affected marine fish species that are important to sport or commercial fishing in the ocean waters off the coast of California south of a line extending due west from Point Arguello.

Comment. Section 25710 continues former Fish and Game Code Section 6592 without substantive change.

§ 25715. Creation of advisory panel

25715. (a) To assist the director in establishing policy and direction for the research and enhancement programs to be supported from the Fish and Game Preservation Fund, there is hereby created in the department an Ocean Resources Enhancement Advisory Panel.

(b) The panel shall consist of the following members:

(1) One member representing the department.

(2) One member from the University of California, appointed by the president.

(c) One member from the California State University System, appointed by the chancellor.

(4) Two members representing persons working in the southern California commercial fishing industry, of which one shall be appointed by the director from a list of at least three persons submitted by the California Gillnetters Association and one shall be appointed by the director from a list of at least three persons submitted by the California Fisheries and Seafood Institute.

1 (5) One member representing the southern California commercial passenger
2 fishing vessel industry, appointed by the director from a list of at least three
3 persons submitted by the Sportfishing Association of California.

4 (6) Three members representing persons who engage in southern California
5 ocean sport fishing, of which one shall be appointed by the director from a list of
6 at least three persons submitted by the United Anglers of California, one appointed
7 by the director from a list of at least three persons submitted by the National
8 Coalition for Marine Conservation, Pacific Region, and one appointed by the
9 director from a list of at least three persons submitted by California resident
10 members of the American Fishing Tackle Manufacturers Association.

11 (7) One member representing the California Aquaculture Association
12 established pursuant to Section 24800.

13 (c) No person shall serve on the panel if that person is receiving research
14 funding from the program.

15 **Comment.** Subdivision (a) of Section 25715 continues former Fish and Game Code Section
16 6594 without substantive change.

17 Subdivision (b) continues the second sentence of former Fish and Game Code Section 6593
18 without substantive change.

19 **§ 25720. Administration of program**

20 25720. The program is administered by the director, with the advice and
21 assistance of the advisory panel created in Section 25715. The director may
22 appoint, with the advice and consent of the advisory panel, a program manager to
23 assist in administering the program.

24 **Comment.** Section 25720 continues the first and third sentences of former Fish and Game
25 Code Section 6593 without substantive change.

26 **§ 25725. Use of funds**

27 25725. (a) All fees collected by the department pursuant to this title, Section
28 13255, 14620, and any interest earned on those fees, shall be deposited in the Fish
29 and Game Preservation Fund and shall be available, upon appropriation by the
30 Legislature, solely for purposes of the program. The department shall maintain the
31 internal accountability necessary to ensure that expenditures of these funds meet
32 the requirements and restrictions of the purposes of the program.

33 (b) An amount, not to exceed 15 percent of the total annual revenues deposited
34 in the fund pursuant to this title, may be appropriated for the administration of the
35 program, including any reasonable and necessary expenses incurred by members
36 of the Ocean Resources Enhancement Advisory Panel in the discharge of their
37 duties pursuant to this title.

38 (c) No part of the program may be financed pursuant to this title unless it has
39 been approved by both the director and a majority of the members of the Ocean
40 Resources Enhancement Advisory Panel.

41 **Comment.** Section 25725 continues former Fish and Game Code Section 6595 without
42 substantive change.

1 **§ 25730. Contracting with nonprofit organizations**

2 25730. The department may contract with private nonprofit organizations that,
3 prior to January 1, 1984, were conducting research related to the purposes of the
4 program, to conduct research projects pursuant to this title.

5 **Comment.** Section 25730 continues former Fish and Game Code Section 6597 without
6 change.

7 **§ 25735. Participation by other entities**

8 25735. It is in the interest of the state to have broad participation in
9 enhancement programs. Therefore, this program shall be open to participation by
10 qualified academic institutions, as determined by the department, and nonprofit
11 organizations, commercial aquaculturists, and for profit enterprises.

12 **Comment.** Section 25735 continues former Fish and Game Code Section 6597.5 without
13 change.

14 **§ 25740. Name of program location**

15 25740. Any place at which all or a significant part of the program is conducted
16 shall be named the “California Marine Hatchery Institute.”

17 **Comment.** Section 25740 continues former Fish and Game Code Section 6598 without
18 change.

19 **TITLE 5. MISCELLANEOUS PROVISIONS**

20 **§ 25850. Youth camps**

21 25850. The department may plant fish in streams passing through, or in lakes on,
22 land on which is located a youth camp for underprivileged children.

23 **Comment.** Section 25850 continues former Fish and Game Code Section 6402 without
24 change.

25 **§ 25855. Urban fishing program**

26 25855. Notwithstanding Section 25100 or any other provision of law, all funds
27 allocated for fish purchases for the department’s urban fishing program shall be
28 used to purchase all fish and aquatic organisms by contract, pursuant to the
29 requirements of the Public Contract Code, from private registered aquaculture
30 facilities within the state unless the department determines one of the following
31 conditions exists:

32 (a) After reasonable notice, the private facilities are unable to provide the
33 specified fish or aquatic organism.

34 (b) The fish or aquatic organism is infected or diseased.

35 **Comment.** Section 25855 continues former Fish and Game Code Section 1123.5 without
36 substantive change.

PART 4. DOMESTICATION OF GAME ANIMALS

TITLE 1. GAME ANIMALS GENERALLY

§ 26000. License requirement

26000. Any person engaged in raising or importing, or who keeps in captivity, in this state domesticated game birds or domesticated game mammals which normally exist in the wild in this state shall procure a domesticated game breeder's license if the birds or mammals are kept more than 30 days after acquisition. No license is, however, required of any of the following:

- (a) Licensed pheasant clubs, except to the extent provided in Section 29365.
- (b) Licensed domesticated migratory game bird shooting areas as defined in Title 2 (commencing with Section 26200).
- (c) Keepers of hotels, restaurants, boardinghouses, or clubs serving the meat of those birds or mammals for actual consumption on the premises.
- (d) Retail meat dealers selling such meat to customers for actual consumption.
- (e) Public zoological gardens possessing those birds or mammals for exhibition purposes or for the purpose of disposing of the birds or mammals by sale, exchange, or donation to other public zoological gardens.

Comment. Section 26000 continues former Fish and Game Code Section 3200 without substantive change.

Note. Existing Fish and Game Code Section 3200(a) exempts from the section's licensing requirement "[l]icensed pheasant clubs, except to the extent provided in Section 3283." However, former Fish and Game Code Section 3283 was repealed by 1994 Cal. Stat. ch. 849, the digest of which indicated that the subject matter of Section 3283, and other deleted sections, would be instead governed by regulations adopted by the Fish and Game Commission. The same bill also added Fish and Game Code Section 3270(a) (which would be continued in the proposed law by proposed Section 29365), which provides:

"3270. (a) In order to provide additional hunting by stocking domestically propagated game birds, and to permit the taking of game birds under conditions that will not conflict with the public interest, any person who owns or controls the hunting rights on a tract of land may apply to the department for a game bird club license authorizing the taking of game birds upon that land in accordance with the regulations of the commission for the administration, including the implementation and enforcement, of this section."

To express this legislative change, proposed Section 2600(a) would restate the exemption in that provision as "Licensed pheasant clubs, except to the extent provided in Section 29365."

The Commission invites comment on the appropriateness of the proposed restatement of this provision.

§ 26005. Sale of carcass

26005. No person shall sell the carcass of any domesticated game bird or domesticated game mammal without first obtaining a domesticated game breeder's license from the department. The department may issue that license upon terms and conditions as the commission may prescribe, and the commission may at any time revoke the license for sufficient cause.

1 **Comment.** Section 26005 continues former Fish and Game Code Section 3201 without
2 substantive change.

3 **§ 26010. Class 1 and class 2 licenses**

4 26010. There are classes of domesticated game breeder's licenses, designated
5 "class 1" and "class 2."

6 (a) A class 1 domesticated game breeder's license authorizes the licensee to
7 engage in all domesticated game breeding activities except that not more than 175
8 Chinese ringneck or Mongolian ringneck pheasants, or both, or hybrids thereof,
9 may be sold under a class 1 license.

10 (b) A class 2 domesticated game breeder's license is required in order to sell
11 more than 175 Chinese ringneck or Mongolian ringneck pheasants, or both, or
12 hybrids thereof, and entitles the licensee to all the rights and privileges of a class 1
13 license.

14 **Comment.** Section 26010 continues former Fish and Game Code Section 3202 without
15 substantive change.

16 **§ 26015. License fee**

17 26015. The department shall issue a class 1 domesticated game breeder's license
18 upon the payment of a base fee of eight dollars (\$8), as adjusted under Section
19 3755, and a class 2 domesticated game breeder's license upon the payment of a
20 base fee of forty dollars (\$40), as adjusted under Section 3755.

21 **Comment.** Section 26015 continues former Fish and Game Code Section 3203 without
22 substantive change.

23 **§ 26020. Term of license**

24 26020. A license issued under the provisions of this title is valid for a term of
25 one year from January 1, or if issued after the beginning of the term, for the
26 remainder of that term.

27 **Comment.** Section 26020 continues the first paragraph of former Fish and Game Code Section
28 3204 without substantive change.

29 **§ 26025. Display of license**

30 26025. A domesticated game breeder's license shall be conspicuously displayed
31 on the property where the birds or mammals are held in captivity.

32 **Comment.** Section 26025 continues the second paragraph of former Fish and Game Code
33 Section 3204 without substantive change.

34 **§ 26030. Carriers for hire**

35 26030. Carriers for hire may carry within the state live domesticated game birds
36 and live domesticated game mammals upon terms and conditions as the
37 commission may prescribe.

38 **Comment.** Section 26030 continues former Fish and Game Code Section 3205 without
39 substantive change.

1 **§ 26035. Tag requirement**

2 26035. (a) No domesticated game bird or domesticated game mammal shall be
3 transported or sold dead unless each quarter and each loin of the carcass of each
4 large mammal, the carcass of each bird, except as provided in Section 28505 for a
5 bird raised outside this state, and the carcass of each small mammal, is tagged with
6 a domesticated game breeder's tag or seal. The tag or seal shall not be removed
7 until such quarter, loin, or carcass is prepared for consumption.

8 (b) No tag so affixed shall be used again.

9 (c) No tag or seal shall be sold by the department to anyone other than a person
10 who is legally in possession of domesticated game.

11 **Comment.** Section 26035 continues former Fish and Game Code Section 3206 without
12 substantive change.

13 **§ 26040. Fee for tag**

14 26040. The department shall collect three cents (\$0.03) for each tag or seal.

15 **Comment.** Section 26040 continues former Fish and Game Code Section 3207 without
16 substantive change.

17 **§ 26045. Report to Department**

18 26045. (1) On or before January 31 of each year, every person to whom a
19 domesticated game breeder's license has been issued shall report the following to
20 the department on a form provided by the department:

21 (1) The total number of each species of birds and mammals killed, sold, or
22 shipped during the preceding year.

23 (2) The names of the persons to whom the birds or mammals were sold or
24 shipped.

25 (3) The name of the person in whose presence the birds or mammals were
26 tagged.

27 (4) A complete list of the game birds and mammals held in the person's
28 possession at the time the report is made.

29 (b) The report shall be verified by the affidavit of the licensee.

30 **Comment.** Section 26045 continues former Fish and Game Code Section 3208 without
31 substantive change.

32 **§ 26050. Poultry processing plants**

33 26050. (a) In lieu of the tag required by Section 26035, poultry processing plants
34 licensed pursuant to Chapter 4 (commencing with Section 18650) or Chapter 4.1
35 (commencing with Section 18940) of Part 3 of Division 9 of the Food and
36 Agricultural Code, which process domesticated game birds received from persons
37 licensed pursuant to this title, may package each individual carcass in a
38 nonreusable container clearly labeled on the outside with the species of bird and
39 the wording "Product of a Licensed California Domesticated Game Breeder."

1 (b) Each processor receiving domesticated game birds shall keep a complete
2 record of all birds received showing all of the following:

3 (1) The date received.

4 (2) The number and species of birds in each lot or shipment.

5 (3) The complete name, address, and domesticated game breeders' license
6 number of the person from whom the birds were received.

7 (4) The disposition of processed birds, the date of sale or shipment, the quantity
8 and species sold or shipped, and the person to whom the birds were sold or
9 shipped.

10 (c) The records shall be retained by the processor for one year following the date
11 of processing. These records shall be subject to inspection upon demand by any
12 officer of the department during hours the processing plant is in operation or open
13 for business.

14 (d) This section does not affect the requirements of Section 26035 governing
15 tagging domesticated game birds for transportation by those other than licensed
16 poultry processors.

17 **Comment.** Section 26050 continues former Fish and Game Code Section 3209 without
18 substantive change.

19 **§ 26055. Sale of meat by keeper of establishment**

20 26055. The keeper of a hotel, restaurant, boardinghouse, or club may sell
21 portions of a quarter or loin of a large mammal, or the carcass of a bird or mammal
22 raised or imported under a domesticated game breeder's license, to a patron for
23 actual consumption on the premises only, and no license for that purpose shall be
24 required of the keeper or club. All keepers of hotels, restaurants, boardinghouses,
25 or clubs who sell any a domesticated game bird or domesticated game mammal for
26 consumption to a patron shall be required to submit to the inspection of their
27 premises by the department and shall display for inspection any carcass or animal
28 parts held in storage for sale. That game shall be tagged under Section 26035.

29 **Comment.** Section 26055 continues former Fish and Game Code Section 3212 without
30 substantive change.

31 **§ 26060. Sale of meat by retail meat dealer**

32 26060. (a) A retail meat dealer may, without a license, sell portions of a quarter
33 or loin of a large mammal or the carcass of a bird or mammal raised or imported
34 under a domesticated game breeder's license to a customer for actual
35 consumption.

36 (b) Retail dealers shall submit their premises to inspection by the department,
37 and shall display at any authorized inspection any carcass or animal parts held by
38 them in storage. That game shall be tagged under Section 26035.

39 **Comment.** Section 26060 continues former Fish and Game Code Section 3213 without
40 substantive change.

1 **§ 26065. Confinement and escape**

2 26065. (a) Domesticated game breeders or other persons holding domesticated
3 game mammals in captivity shall confine the mammals in escape-proof cages or
4 enclosures.

5 (b) In the event any of the mammals escape from the cages or enclosures, the
6 owner shall immediately make every reasonable effort to recapture them.

7 (c) If the owner fails to recapture the escaped mammals, the department may
8 capture the mammals or remove them from the wild by whatever means may be
9 necessary if, in the opinion of the department, the mammals may conflict with
10 native species of birds or mammals or cause damage to public or private property.

11 (d) The owner shall reimburse the department for all costs incurred in capturing
12 or removing the mammals from the wild. The owner shall be responsible for any
13 damage the mammals may cause to public or private property.

14 (e) Any domesticated big game mammal may be marked with ear tags or other
15 suitable markings or tags, as may be specified by the commission, which shall
16 identify the owner of the mammals.

17 **Comment.** Section 26065 continues former Fish and Game Code Section 3214 without
18 substantive change.

19 **§ 26070. Killing of domesticated game animals**

20 26070. All domesticated game birds and domesticated game mammals,
21 excepting deer, sold under the provisions of this title, shall be killed by means
22 other than by shooting. This section does not apply to licensed pheasant clubs,
23 licensed domesticated migratory game bird shooting areas, or to the training or
24 practice of hunting dogs.

25 **Comment.** Section 26070 continues former Fish and Game Code Section 3216 without
26 substantive change.

27 **§ 26075. Evidence of domesticated status**

28 26075. The carcass of a game bird that shows that it has been killed by shooting
29 shall constitute prima facie evidence that it was not a domesticated game bird. The
30 fact that the bird has been tagged in accordance with Section 26035 of this code
31 shall not alter this presumption.

32 **Comment.** Section 26075 continues former Fish and Game Code Section 3217 without
33 substantive change.

34 **§ 26080. Revocation of license**

35 26080. Any license issued under this title may be revoked by the commission
36 upon conviction of the licensee of a violation of any provision of this code, and no
37 similar license may be issued to the licensee during the same license year.

38 **Comment.** Section 26080 continues former Fish and Game Code Section 3218 without
39 substantive change.

1 **§ 26085. Domesticated reindeer**

2 26085. Domesticated reindeer may be imported into this state and sold only in
3 accordance with regulations that the commission may adopt.

4 **Comment.** Section 26085 continues former Fish and Game Code Section 3219 without
5 substantive change.

6 **TITLE 2. MIGRATORY GAME BIRDS**

7 **§ 26200. Definition**

8 26200. For purposes of this part, a “domesticated migratory game bird” is a
9 migratory game bird held live in captivity at or after six weeks of age.

10 **Comment.** Section 26200 restates the second paragraph of former Fish and Game Code
11 Section 3300 without substantive change.

12 **Notes.** (1) Proposed Section 26200 restates the second paragraph of existing Section 3300
13 to improve its clarity, and make clear that the definition in the provision is meant to apply
14 throughout existing Sections 3300 through 3311, without changing the substantive effect of the
15 provision. The existing provision reads as follows:

16 “Any bird of a species included in the definition of migratory game birds, as defined in Section
17 3500, which has been held live in captivity is a “domesticated migratory game bird” for purposes
18 of this section, except such a bird that has been released from captivity and any control before
19 attaining six weeks of age.”

20 **The Commission invites comment on whether the proposed restatement would cause any**
21 **substantive change in the meaning of the provision.**

22 (2) The second paragraph of existing Section 3300 defines a “domesticated migratory game
23 bird” for purposes of “this section.” However, the term “domesticated migratory game bird” is
24 used elsewhere in the existing Fish and Game Code, with no corresponding definition. See
25 existing Sections 3031, 3200, 3216, 3240.5.

26 **Should this definition be made applicable to the code generally, and included with the**
27 **general definitions in the first division of the proposed law?**

28 **§ 26205. License requirement**

29 26205. It is unlawful to raise and release, or release, domesticated migratory
30 game birds for shooting by a person paying for that privilege, without a revocable
31 nontransferable license issued by the department pursuant to Section 26210.

32 **Comment.** Section 26205 restates the first sentence of the first paragraph of former Fish and
33 Game Code Section 3300 without substantive change.

34 **§ 26210. License to raise and release**

35 26210. (a) A license to raise and release, or release, domesticated migratory
36 game birds for shooting by persons who pay for that privilege may be issued
37 annually by the department, and shall be valid from July 1 through the following
38 June 30, upon payment of a base fee of eighty dollars (\$80), as adjusted under
39 Section 3755.

40 (b) The application for the license shall show the size and location of the area to
41 be licensed.

1 **Comment.** Subdivision (a) of Section 26210 continues the second sentence of the first
2 paragraph of former Fish and Game Code Section 3300 without substantive change.

3 Subdivision (b) continues the first sentence of former Fish and Game Code Section 3301
4 without substantive change.

5 **§ 26215. Posting of area**

6 26215. A person licensed pursuant to Section 26210 shall post the boundaries of
7 the licensed area with signs, at intervals of not more than 500 feet, which shall
8 indicate that the area is licensed for the shooting of domesticated migratory game
9 birds. The dimensions of each sign shall be at least 12 by 18 inches.

10 **Comment.** Section 26215 continues the second and third sentences of former Fish and Game
11 Code Section 3301 without substantive change.

12 **§ 26220. Additional regulatory requirements**

13 26220. The commission may adopt additional regulations deemed necessary for
14 the releasing and shooting of domesticated migratory game birds and shall set the
15 season and areas where domesticated migratory game birds may be taken. If a
16 person licensed pursuant to Section 26210 violates any provision of this title or
17 any regulation adopted pursuant to this title, the commission may cancel or revoke
18 that license after providing the licensee notice and an opportunity to be heard by
19 the commission.

20 **Comment.** Section 26220 continues former Fish and Game Code Section 3302 without
21 substantive change.

22 **§ 26225. Care of birds**

23 26225. When domesticated migratory game birds are raised or held for release
24 by a person licensed pursuant to Section 26210, the licensee shall provide proper
25 and adequate care for the birds and shall raise and hold them only under sanitary
26 conditions. Conditions for proper care and raising shall be prescribed by the
27 commission.

28 **Comment.** Section 26225 continues the first and second sentences of former Fish and Game
29 Code Section 3303 without substantive change.

30 **§ 26230. Inspection of birds and facilities**

31 26230. A person licensed pursuant to Section 26210 shall provide for the
32 inspection of birds and facilities upon the request of the department.

33 **Comment.** Section 26230 continues the third sentence of former Fish and Game Code Section
34 3303 without substantive change.

35 **§ 26235. Condition of birds**

36 26235. A person licensed pursuant to Section 26210 may only release for
37 shooting domesticated migratory game birds that are at least 14 weeks of age,
38 capable of strong and sustained flight, fully feathered, and otherwise in condition


1 to survive in the wild. A licensee shall not release a domesticated migratory game
2 bird that is in any of the following conditions:

3 (a) Altered in any manner that would, in the opinion of the department, render
4 the bird incapable of normal sustained flight.

5 (b) Diseased.

6 (c) Shows evidence of malnutrition or injury.

7 **Comment.** Section 26235 restates former Fish and Game Code Section 3305 without
8 substantive change.

9  **Note.** Proposed Section 26235 is intended to restate existing Section 3305 to improve its
10 clarity, without changing its substantive effect. The existing provision reads as follows:

11 “All domesticated migratory game birds at time of release for shooting shall be at least 14
12 weeks of age, capable of strong and sustained flight, fully feathered, and otherwise in condition to
13 survive in the wild. Birds that are altered in any manner which would, in the opinion of the
14 department, render them incapable of normal sustained flight, or which are diseased, or show
15 evidence of malnutrition or injury, shall not be released.”

16 **The Commission invites comment on whether the proposed restatement would cause any**
17 **substantive change in the meaning of the provision.**

18 **§ 26240. Blinds**

19 26240. (a) Shooting in an area licensed pursuant to Section 26210 shall be
20 confined to blinds, except for shooting necessary to recover a downed and injured
21 bird.

22 (b) No more than three shooters shall occupy or use each blind.

23 (c) Blinds shall be constructed to prevent the shooting of domestic migratory
24 game birds over water, and to insure maximum safety to occupants of adjoining
25 blinds.

26 (d) Blinds shall be situated so that the occupants of the blinds cannot see the
27 release site.

28 **Comment.** Section 26240 continues the first and second paragraphs of former Fish and Game
29 Code Section 3306 without substantive change.

30 **§ 26245. Shooting or taking near release point**

31 26245. (a) A person licensed pursuant to Section 26210 shall not permit any
32 shooting within 500 feet of a point where a domesticated migratory bird is
33 released.

34 (b) A domesticated migratory game bird shall not be taken within 500 feet of its
35 point of release.

36 **Comment.** Section 26245 continues the third paragraph of former Fish and Game Code
37 Section 3306 without substantive change.

38 **§ 26250. Birds injured or killed**

39 26250. (a) A person licensed pursuant to Section 26210 shall not permit an
40 injured bird to remain on a pond or feeding area, or knowingly permit an injured
41 bird to be used in any subsequent release.

(b) Any bird killed or injured by a shooter shall be retrieved without delay, and any injured bird shall be humanely dispatched.

Comment. Subdivision (a) of Section 26250 continues the second sentence of the first paragraph of former Fish and Game Code Section 3307 without substantive change.

Subdivision (b) continues the first sentence of the first paragraph of former Fish and Game Code Section 3307 without substantive change.

§ 26255. Retrieving dog

26255. In order to prevent the loss of any dead or injured bird, a person licensed pursuant to Section 26210 shall provide the use of a retrieving dog, without cost, to all shooters, except that shooters may provide their own retrieving dogs. A licensee shall not permit the shooting of any bird unless a retrieving dog is immediately available for use by all shooters.

Comment. Section 26255 continues the second paragraph of former Fish and Game Code Section 3307 without substantive change.

§ 26260. Seal

26260. (a) No dead domesticated migratory game bird shall be removed from an area licensed pursuant to Section 26210 until a seal is securely attached to the carcass.

(b). The seal shall remain attached to the carcass until the carcass is finally prepared for consumption.

(c) Each seal shall be supplied by the department, at a fee set by the commission that may not exceed five cents (\$0.05).

Comment. Section 26260 continues former Fish and Game Code Section 3309 without substantive change.

§ 26265. Inspection fee

26265. A person licensed pursuant to Section 26210 shall pay the department an inspection fee not to exceed five cents (\$0.05) for each domesticated migratory game bird raised or used on the area licensed, to insure adherence to these regulations.

Comment. Section 26265 continues former Fish and Game Code Section 3308 without substantive change.

§ 26270. Shooter required to have hunting license

26270. It is unlawful to shoot a domesticated game bird in an area licensed pursuant to Section 26210 without a valid hunting license as provided by Section 10210.

Comment. Section 26270 continues former Fish and Game Code Section 3310 without substantive change.

§ 26275. Federal requirements

26275. A person releasing or shooting a domesticated migratory game bird shall comply with all applicable federal laws and regulations relating to the releasing or shooting of domesticated migratory game birds.

Comment. Section 26275 continues former Fish and Game Code Section 3311 without substantive change.

Note. Existing Section 3311 appears designed as a reminder that federal laws and regulations may also govern the releasing and shooting of domesticated migratory game birds. However, the use of the word “licensee” in the provision is problematic, for two reasons.

First, it is not clear whether the “licensee” referred to is (1) a person issued a license to *raise and release, or release* domesticated migratory game birds for shooting by others pursuant to existing Section 3300, (2) a person issued the hunting license referred to in existing Section 3310 to *shoot* domesticated migratory game birds, or (3) both of the above. The ambiguity is enhanced by a reference in Section 3311 to federal laws and regulations relating to the “releasing *and* shooting” of domesticated migratory game birds.

Second, regardless of which “licensee” is contemplated, the implication that this provision is applicable only to those licensees is confusing. Absent an exemption in federal law, all persons releasing or shooting a domesticated migratory game bird, whether licensed or not, would be required to comply with whatever federal laws or regulations were “applicable” to that conduct.

To address both of these issues, the Commission has revised the provision so it applies to *any* person who either releases or shoots a domesticated migratory game bird.

The Commission invites comment on whether that revision is appropriate.

PART 5. PROPAGATION OF FUR-BEARING MAMMALS

§ 26400. Applicability of other code provisions

26400. The provisions of this code relating to the trapping of fur-bearing mammals, or to fur dealer license requirements, do not apply to, or prohibit the propagation of, fur-bearing mammals that are confined in accordance with regulations of the commission.

Comment. Section 26400 continues former Fish and Game Code Section 4010 without substantive change.

PART 6. IMPORTATION, TRANSPORTATION, AND POSSESSION

TITLE 1. GENERAL PROVISIONS

§ 26500. “Wild animal”

26500. As used in this part, “wild animal” means any animal of the class Aves (birds), class Mammalia (mammals), class Amphibia (frogs, toads, salamanders), class Osteichthyes (bony fishes), class Monorhina (lampreys), class Reptilia (reptiles), class Crustacea (crayfish), or class Gastropoda (slugs, snails), which is not normally domesticated in this state as determined by the commission.

Comment. Section 26500 continues former Fish and Game Code Section 2116 without substantive change.

1 **§ 26505. “Enforcing officers”**

2 26505. (a) As used in this part, “enforcing officers” means the department, the
3 state plant quarantine officers, the local law enforcement agents, the county
4 sheriffs, and the county agricultural commissioners.

5 (b) Enforcing officers are authorized and empowered to enforce the provisions
6 of this part or any regulation implementing this part.

7 **Comment.** Section 26505 continues former Fish and Game Code Section 2117 without
8 substantive change.

9 **§ 26510. Legislative findings and declarations**

10 26510. (a) The Legislature finds and declares that wild animals are being
11 captured for importation and resale in California; that some populations of wild
12 animals are being depleted; that many animals die in captivity or transit; that some
13 keepers of wild animals lack sufficient knowledge or facilities for the proper care
14 of wild animals; that some wild animals are a threat to the native wildlife or
15 agricultural interests of this state; and that some wild animals are a threat to public
16 health and safety.

17 (b) It is the intention of the Legislature that the importation, transportation, and
18 possession of wild animals shall be regulated to protect the health and welfare of
19 wild animals captured, imported, transported, or possessed, to reduce the depletion
20 of wildlife populations, to protect the native wildlife and agricultural interests of
21 this state against damage from the existence at large of certain wild animals, and
22 to protect the public health and safety in this state.

23 **Comment.** Section 26510 continues former Fish and Game Code Section 2116.5 without
24 substantive change.

25 **TITLE 2. RESTRICTIONS**

26 **CHAPTER 1. GENERAL PROVISIONS**

27 **§ 26600. Adoption of regulations relating to importation and possession**

28 26600. (a) The commission, in cooperation with the Department of Food and
29 Agriculture, shall adopt regulations governing both of the following:

30 (1) The entry, importation, possession, transportation, keeping, confinement, or
31 release of any and all wild animals that will be or that have been imported into this
32 state pursuant to this title.

33 (2) The possession of all other wild animals.

34 (b) The regulations shall be designed to prevent damage to the native wildlife or
35 agricultural interests of this state resulting from the existence at large of these wild
36 animals, and to provide for the welfare of wild animals and the safety of the
37 public.

38 (c) The regulations shall also include criteria for all of the following:

1 (1) The receiving, processing, and issuing of a permit and conducting
2 inspections.

3 (2) Contracting out inspection activities.

4 (3) Responding to public reports and complaints.

5 (4) The notification of the revocation, termination, or denial of permits, and
6 related appeals.

7 (5) The method by which the department determines that the breeding of wild
8 animals pursuant to a single event breeding permit for exhibitor or a breeding
9 permit is necessary and will not result in unneeded or uncared for animals, and the
10 means by which the criteria will be implemented and enforced.

11 (6) How a responding agency will respond to an escape of a wild animal. This
12 shall include, but not be limited to, the establishment of guidelines for the safe
13 recapture of the wild animal and procedures outlining when lethal force would be
14 used to recapture the wild animal.

15 (d) These regulations shall be developed and adopted by the commission on or
16 before January 1, 2007.

17 **Comment.** Section 26600 continues former Fish and Game Code Section 2120 without
18 substantive change.

19 **§ 26605. Designated exemption from permit requirement**

20 26605. The commission may designate wild animals that may be possessed
21 without a permit.

22 **Comment.** Section 26605 continues former Fish and Game Code Section 2118.5 without
23 substantive change.

24 **§ 26610. Commission to adopt regulations providing guidance to enforcing officers**

25 26610. The commission shall adopt regulations in cooperation with the State
26 Department of Food and Agriculture for the guidance of enforcing officers. The
27 regulations shall include a list of the wild animals for which permits that may be
28 issued under this part will be refused, and the disposition of wild animals illegally
29 imported into this state.

30 **Comment.** Section 26610 continues former Fish and Game Code Section 2122 without
31 substantive change.

32 **§ 26615. Department to publish list of prohibited animals**

33 26615. The department shall publish from time to time as changes arise, a list of
34 animals that may not be imported or transported into this state.

35 **Comment.** Section 26615 continues former Fish and Game Code Section 2119 without
36 change.

37 **§ 26620. Department to furnish descriptive explanatory material**

38 26620. The department in cooperation with the State Department of Food and
39 Agriculture shall furnish descriptive and illustrative material concerning the wild
40 animals enumerated in or designated pursuant to Sections 26700 through 26730, as

well as explanatory material setting forth the reasons for designating those animals as undesirable and a menace to native wildlife or to the agricultural interests of this state for the information and guidance of the enforcing officers.

Comment. Section 26620 continues former Fish and Game Code Section 2123 without substantive change.

CHAPTER 2. CLASSES OF RESTRICTED ANIMALS

§ 26700. Restricted birds

26700. It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this part and the regulations pertaining to this part, any wild animal of the following species of the Class Aves (birds):

(a) Family Cuculidae (cuckoos): All species.

(b) Family Alaudidae (larks): Skylark, *Alauda arvensis*.

(c) Family Corvidae (crows, jays, magpies): All species.

(d) Family Turdidae (thrushes):

(1) European blackbird, *Turdus merula*.

(2) Missel (or mistle), thrush, *Turdus viscivorus*.

(e) Family Sturnidae (starlings and mynas or mynahs): All species of the family, except hill myna (or hill mynah), and *Gracula religiosa* (sometimes referred to as *Eulabes religiosa*).

(f) Family Ploceidae (weavers):

(1) Spanish sparrow, *Passer hispaniolensis*.

(2) Italian sparrow, *Passer italiae*.

(3) European tree sparrow, *Passer montanus*.

(4) Cape sparrow, *Passer capensis*.

(5) Madagascar weaver, *Foudia madagascariensis*.

(6) Baya weaver, *Ploceus baya*.

(7) Hawaiian rice bird, *Munia nitoria*.

(8) Red-billed quelea, *Quelea quelea*.

(9) Red-headed quelea, *Quelea erythrops*.

(g) Family Fringillidae (sparrows, finches, buntings): Yellowhammer, *Emberiza citronella*.

Comment. Section 26700 continues former Fish and Game Code Section 2118(a) without substantive change.

§ 26705. Restricted mammals

26705. (a) It is unlawful to import, transport, possess, or release alive into this state, except under a revocable, nontransferable permit as provided in this part and the regulations pertaining to this part, any wild animal of the following species of the Class Mammalia (mammals):

(1) Order Primates: All species except those in family Hominidae.

- (2) Order Edentata (sloths, anteaters, armadillos, etc.): All species.
 - (3) Order Marsupialia (marsupials or pouched mammals): All species.
 - (4) Order Insectivora (shrews, moles, hedgehogs, etc.): All species.
 - (5) Order Dermoptera (gliding lemurs): All species.
 - (6) Order Chiroptera (bats): All species.
 - (7) Order Monotremata (spiny anteaters, platypuses): All species.
 - (8) Order Pholidota (pangolins, scaly anteaters): All species.
 - (9) Order Lagomorpha (pikas, rabbits, hares): All species, except domesticated races of rabbits.
 - (10) Order Rodentia (rodents): All species, except the following species:
 - (A) Domesticated golden hamsters, also known as Syrian hamster, *Mesocricetus auratus*.
 - (B) Domesticated races of rats or mice (white or albino; trained, dancing or spinning, laboratory-reared).
 - (C) Domestic strains of guinea pig (*Cavia porcellus*).
 - (11) Order Carnivora (carnivores): All species, except domestic dogs (*Canis familiaris*) and domestic cats (*Felis catus*).
 - (12) Order Tubulidentata (aardvarks): All species.
 - (13) Order Proboscidea (elephants): All species.
 - (14) Order Hyracoidea (hyraxes): All species.
 - (15) Order Sirenia (dugongs, manatees): All species.
 - (16) Order Perissodactyla (horses, zebras, tapirs, rhinoceroses, etc.): All species except those of the family Equidae.
 - (17) Order Artiodactyla (swine, peccaries, camels, deer, elk, except elk (genus *Cervus*) that are subject to Section 26865, moose, antelopes, cattle, goats, sheep, etc.): All species except the following species:
 - (A) Domestic swine of the family Suidae.
 - (B) American bison.
 - (C) Anomestic cattle.
 - (D) Sheep and goats of the family Bovidae.
 - (E) Races of big-horned sheep (*Ovis canadensis*) now or formerly indigenous to this state.
 - (b) Mammals of the orders Primates, Edentata, Dermoptera, Monotremata, Pholidota, Tubulidentata, Proboscidea, Perissodactyla, Hyracoidea, Sirenia and Carnivora are restricted for the welfare of the animals, except animals of the families Viverridae and Mustelidae in the order Carnivora are restricted because such animals are undesirable and a menace to native wildlife, the agricultural interests of the state, or to the public health or safety.
- Comment.** Section 26705 continues former Fish and Game Code Section 2118(b) without substantive change.

1 **§ 26710. Restricted amphibians**

2 26710. It is unlawful to import, transport, possess, or release alive into this state,
3 except under a revocable, nontransferable permit as provided in this part and the
4 regulations pertaining to this part, any wild animal of the following species of the
5 Class Amphibia (frogs, toads, salamanders):

6 (a) Family Bufonidae (toads).

7 (b) Giant toad or marine toad, *Bufo marinus*.

8 **Comment.** Section 26710 continues former Fish and Game Code Section 2118(c) without
9 substantive change.

10 **§ 26715. Restricted fish**

11 26715. It is unlawful to import, transport, possess, or release alive into this state,
12 except under a revocable, nontransferable permit as provided in this part and the
13 regulations pertaining to this part, any wild animal of the following species of fish:

14 (a) Class Monorhina (lampreys): All species.

15 (b) Class Osteichthyes (bony fishes):

16 (1) Family Serranidae (bass): White perch, *Morone* or *Roccus americana*.

17 (2) Family Clupeidae (herring): Gizzard shad, *Dorosoma cepedianum*.

18 (3) Family Sciaenidae (croakers): Freshwater sheepshead, *Aplodinotus*
19 *grunniens*.

20 (4) Family Characidae (characins):

21 (A) Banded tetra, *Astyanax fasciatus*.

22 (B) All species of piranhas.

23 (5) Family Lepisosteidae (gars): All species.

24 (6) Family Amiidae (bowfins): All species.

25 (c) Except as expressly authorized in this code, any live nonindigenous Atlantic
26 salmon or its roe, in the Smith River watershed.

27 **Comment.** Section 26715 continues former Fish and Game Code Section 2118(d)-(e) and (j)
28 without substantive change.

29 **§ 26720. Restricted reptiles**

30 26720. It is unlawful to import, transport, possess, or release alive into this state,
31 except under a revocable, nontransferable permit as provided in this part and the
32 regulations pertaining to this part, any wild animal of the following species of the
33 Class Reptilia (snakes, lizards, turtles, alligators): all species of the Family
34 Crocodilidae.

35 **Comment.** Section 26720 continues former Fish and Game Code Section 2118(f) without
36 substantive change.

37 **§ 26725. Restricted invertebrates**

38 26725. It is unlawful to import, transport, possess, or release alive into this state,
39 except under a revocable, nontransferable permit as provided in this part and the

1 regulations pertaining to this part, any wild animal of the following species of
2 invertebrates:

3 (a) Class Crustacea (crustaceans):

4 (1) Genus *Cambarus* (crayfishes): All species.

5 (2) Genus *Astacus* (crayfishes): All species.

6 (3) Genus *Astacopsis* (crayfishes): All species.

7 (b) Class Gastropoda (slugs, snails, clams):

8 (1) All species of slugs.

9 (2) All species of land snails.

10 **Comment.** Section 26725 continues the part of former Fish and Game Code Section 2118(g)-
11 (h) without substantive change.

12 § 26730. Animals restricted by designation

13 26730. It is unlawful to import, transport, possess, or release alive into this state,
14 except under a revocable, nontransferable permit as provided in this part and the
15 regulations pertaining to this part, any wild animal of any class, order, family,
16 genus, and species that may be designated by the commission in cooperation with
17 the Department of Food and Agriculture, (1) when the class, order, family, genus,
18 or species is proven to be undesirable and a menace to native wildlife or the
19 agricultural interests of the state, or (2) to provide for the welfare of wild animals.

20 **Comment.** Section 26730 continues former Fish and Game Code Section 2118(i) without
21 substantive change.

22 § 26735. Addition or deletion or animals from restriction

23 26735. Classes, families, genera, and species may be added to or deleted from
24 Sections 26555 through 26580, inclusive, from time to time, by commission
25 regulations in cooperation with the Department of Food and Agriculture.

26 **Comment.** Section 26735 continues former Fish and Game Code Section 2118(k) without
27 substantive change.

28 CHAPTER 3. ADDITIONAL PROHIBITIONS

29 § 26850. Prohibition relating to gain, amusement, or sport

30 26850. (a) Except as otherwise authorized by this code or regulations adopted
31 pursuant to this code, including, but not limited to provisions that authorize raising
32 deer to produce venison for market, it is unlawful for any person to possess,
33 transport, import, export, propagate, purchase, sell, or transfer any live mammal
34 listed in Section 26705 for the purpose of maiming, injuring, or killing the
35 mammal for gain, amusement, or sport.

36 (b) Except as otherwise authorized by this code or regulations adopted pursuant
37 to this code, the buyer of a live mammal listed in Section 26705 shall not resell the
38 live mammal to another buyer who has the intent to maim, injure, or kill that
39 mammal for purpose of gain, amusement, or sport.

1 (c) This section does not apply to the meat, hide, or parts of a dead mammal.

2 **Comment.** Section 26850 continues former Fish and Game Code Section 2124 without
3 substantive change.

4 **§ 26855. Prohibited take**

5 26855. (a) Except as otherwise authorized by this code or regulations adopted
6 pursuant to this code, it is unlawful for any person to take any mammal listed in
7 Section 26705.

8 (b) This section does not prohibit the euthanasia of a mammal as appropriately
9 directed by a licensed veterinarian or animal health technician.

10 **Comment.** Section 26855 continues former Fish and Game Code Section 2126 without
11 substantive change.

12 **§ 26860. Prohibited release of wild animal**

13 26860. No person having possession or control over any wild animal under this
14 part shall intentionally free, or knowingly permit the escape, or release of that
15 animal, except in accordance with the regulations of the commission.

16 **Comment.** Section 26860 continues former Fish and Game Code Section 2121 without
17 substantive change.

18 **§ 26865. Elk**

19 26865. (a) Except as provided in this section or Section 1710, it is unlawful to
20 import any elk (genus *Cervus*) into this state.

21 (b) The department may import elk pursuant to Section 1710, if prior to such
22 importation, the department issues written findings justifying the need for and
23 explaining the purpose of the importation.

24 (c) Subdivision (a) shall not apply to zoos certified by the United States
25 Department of Agriculture.

26 (d) The department shall seize any elk imported in violation of subdivision (a).

27 (e) No part of any elk horn or antler shall be removed from any live elk for
28 commercial purposes.

29 **Comment.** Subdivisions (a) through (c) of Section 26865 continue former Fish and Game
30 Code Section 2118.2 without substantive change.

31 Subdivision (d) continues former Fish and Game Code Section 2118.4 without substantive
32 change.

33 Subdivision (e) continues former Fish and Game Code Section 2118.3 without substantive
34 change.

35 **§ 26870. Elephants**

36 26870. (a)(1) Any person who houses, possesses, manages, or is in direct contact
37 with an elephant shall not do either of the following:

38 (A) Use a bullhook, ankus, baseball bat, axe handle, pitchfork, or other device
39 designed to inflict pain for the purpose of training or controlling the behavior of an
40 elephant.

1 (B) Authorize or allow an employee, agent, or contractor to use a bullhook,
2 ankus, baseball bat, axe handle, pitchfork, or other device designed to inflict pain
3 for the purpose of training or controlling the behavior of an elephant.

4 (2) Use prohibited by this subdivision includes brandishing, exhibiting, or
5 displaying the devices in the presence of an elephant.

6 (b) Any person who violates this section is subject to the civil penalty set forth
7 in Section 27005 or for each violation, and the restricted species permit for the
8 elephant is subject to immediate suspension or revocation by the department. A
9 person whose restricted species permit is suspended or revoked pursuant to this
10 section may appeal the suspension or revocation to the commission by filing a
11 written request for an appeal with the commission within 30 days of the
12 suspension or revocation. A person who violates this section is not subject to the
13 criminal penalties set forth in this code.

14 (c) The provisions of this section are in addition to, and not in lieu of, any other
15 laws protecting animal welfare. This section shall not be construed to limit any
16 state law or rules protecting the welfare of animals or to prevent a local governing
17 body from adopting and enforcing its own animal welfare laws and regulations.

18 (d) This section shall become operative on January 1, 2018.

19 **Comment.** Section 26870 continues former Fish and Game Code Section 2128 without
20 change.

21 CHAPTER 4. PENALTIES

22 § 27000. Criminal punishment

23 27000. Except as otherwise provided, any violation of any provision of this part
24 or of any regulation implementing any provision of this part is a misdemeanor,
25 punishable by imprisonment in a county jail for not more than six months, or by a
26 fine of not more than one thousand dollars (\$1,000).

27 **Comment.** Section 27000 continues the second sentence of former Fish and Game Code
28 Section 2125(a) without substantive change.

29 § 27005. Civil penalty

30 27005. (a) In addition to any other penalty provided by law, any person who
31 violates any provision of this part or any regulation implementing any provision of
32 this part, is subject to a civil penalty of not less than five hundred dollars (\$500),
33 nor more than ten thousand dollars (\$10,000), for each violation.

34 (b) The Attorney General, or the city attorney of the city or the district attorney
35 or county counsel of the county in which a violation of this title occurs, may bring
36 a civil action to recover the civil penalty in subdivision (a) and the costs of seizing
37 and holding an animal listed in or designated pursuant to Sections 26700 through
38 26730, inclusive, except to the extent that those costs have already been collected
39 as provided by Section 27015. The civil action shall be brought in the county in
40 which the violation occurs, and any penalty imposed shall be transferred to the

1 Controller for deposit in the Fish and Game Preservation Fund in accordance with
2 Section 3600.

3 **Comment.** Subdivision (a) of Section 27005 continues the first sentence of former Fish and
4 Game Code Section 2125(a) without substantive change.

5 Subdivision (b) continues former Fish and Game Code Section 2125(b) without substantive
6 change.

7 **Note.** Existing Fish and Game Code Section 2125(a) (which would be continued by proposed
8 Section 27005(a)) provides for a civil penalty to be imposed against any person who violates the
9 *chapter* in which Section 2125 appears, or any regulation implementing that chapter. However,
10 Section 2125(b) (which would be continued by proposed Section 27005(b)) authorizes designated
11 officials from the county in which a violation of the *article* in which Section 2125 appears, to
12 bring a civil action to recover that penalty.

13 **The Commission invites comment on whether this distinction was intended, and if it was**
14 **not, which reference was intended.**

15 **§ 27010. Additional costs and fees**

16 27010. In an action brought under this chapter, in addition to the penalty
17 specified in Section 27005, the reasonable costs of investigation, reasonable
18 attorney's fees, and reasonable expert witness fees may also be recovered, and
19 those amounts shall be credited to the same operating funds as those from which
20 the expenditures for those purposes were derived.

21 **Comment.** Section 27010 continues former Fish and Game Code Section 2125(c) without
22 substantive change.

23 **Note.** Existing Fish and Game Code Section 2125(c) (which would be continued by proposed
24 Section 27010) provides that, in addition to "the penalty" specified in "subdivision (a)," various
25 additional costs and fees may be recovered in an action brought under Section 2125.

26 Existing Section 2125(a) arguably specifies *two* penalties – a civil penalty that would be
27 provided for by proposed Section 27005, and a criminal penalty that would be provided for by
28 proposed Section 27000. However, as the additional costs and fees authorized by Section 2125(c)
29 are normally – but not always – ordered if at all in a civil action, and not a criminal action,
30 proposed Section 27010 references only the penalty specified in proposed Section 27005.

31 **The Commission invites comment on whether that approach would cause any problems.**

32 **§ 27015. Recovery of confiscated animal**

33 27015. (a) If an animal is confiscated because the animal was kept in
34 contravention of this part or any regulation implementing this part, the person
35 claiming the animal shall pay to the department or the new custodian of the animal
36 an amount sufficient to cover all reasonable expenses expected to be incurred in
37 caring for and providing for the animal for at least 30 days, including, but not
38 limited to, the estimated cost of food, medical care, and housing.

39 (b) If the person claiming the animal fails to comply with the terms of his or her
40 permit and fails to regain possession of the animal by the expiration of the first 30-
41 day period, the department may euthanize the animal or place the animal with an
42 appropriate wild animal facility at the end of the 30 days, unless the person
43 claiming the animal pays all reasonable costs of caring for the animal for a second
44 30-day period before the expiration of the first 30-day period. If the permittee is

1 still not in compliance with the terms of the permit at the end of the second 30-day
2 period, the department may euthanize the animal or place the animal in an
3 appropriate wild animal facility.

4 (c) The amount of the payments described in this section shall be determined by
5 the department, and shall be based on the current reasonable costs to feed, provide
6 medical care for, and house the animal. If the person claiming the animal complies
7 with the terms of his or her permit and regains possession of the animal, any
8 unused portion of the payments required pursuant to this section shall be returned
9 to the person claiming the animal no later than 90 days after the date on which the
10 person regains possession of the animal.

11 **Comment.** Section 27015 continues former Fish and Game Code Section 2125(d) without
12 substantive change.

13 **§ 27020. Reimbursement to local entities**

14 27020. (a) The department may reimburse eligible local entities, pursuant to a
15 memorandum of understanding entered into pursuant to this section, for costs
16 incurred by the eligible local entities in the administration and enforcement of any
17 provision concerning the possession of, handling of, care for, or holding facilities
18 provided for, a wild animal listed in or designated pursuant to Sections 26700
19 through 26730, inclusive.

20 (b) The department may enter into memorandums of understanding with eligible
21 local entities for the administration and enforcement of any provision concerning
22 the possession of, handling of, care for, or holding facilities provided for, a wild
23 animal listed in or designated pursuant to Sections 26700 through 26730,
24 inclusive.

25 (c) The commission shall adopt regulations that establish specific criteria an
26 eligible local entity shall meet in order to qualify as an eligible local entity.

27 (d) For the purposes of this division, “eligible local entity” means a county, local
28 animal control officer, local humane society official, educational institution, or
29 trained private individual that enters into a memorandum of understanding with
30 the department pursuant to this section.

31 **Comment.** Section 27020 continues former Fish and Game Code Section 2127 without
32 substantive change.

33 **Note.** Subdivisions (a) and (b) of existing Fish and Game Code Section 2127 refer to a wild
34 animal “designated pursuant to” existing Fish and Game Code Section 2118. Several other
35 sections in the chapter in which Sections 2118 and 2127 appear refer to wild animals
36 “enumerated in or designated pursuant to” Section 2118. For consistency, the proposed law
37 would revise all of those references, including the two references in proposed Section 27020(a)
38 and (b), to read “listed in or designated pursuant to” the provisions that would continue Section
39 2118.

40 **The Commission invites comment on whether this revision would substantively change**
41 **the intended meaning of existing Section 2127(a) or (b).**

TITLE 3. PERMITS

§ 27200. Issuance of permit

27200. (a) The department, in cooperation with the Department of Food and Agriculture, may, upon application, issue a written permit to import into, possess, or transport within this state any wild animal enumerated in, or designated pursuant to, Section 671 of Title 14 of the California Code of Regulations, upon a determination that the animal is not detrimental or that no damage or detriment can be caused to agriculture, native wildlife, the public health or safety, or the welfare of the animal, as a result of the importation, transportation, or possession.

(b) A permit may be issued to any person only upon application and payment of a nonrefundable application fee in an amount determined by the department pursuant to subdivision (a) of Section 27215. Application forms shall be provided by the department and shall be designed to ascertain the applicant's ability to properly care for the wild animal or animals the applicant seeks to import, transport, or possess. Proper care includes providing adequate food, shelter, and veterinary care, and other requirements the commission may designate.

Comment. Section 27200 continues former Fish and Game Code Section 2150(a) without substantive change.

§ 27205. Denial or revocation of permit

27205. The commission or the department shall deny a permit and the commission shall revoke a permit if it finds that a permittee or applicant has failed to meet, or is unable to meet, the requirements for importing, transporting, possessing, or confining any wild animal as established pursuant to Section 26600.

Comment. Section 27205 continues former Fish and Game Code Section 2150(b) without substantive change.

§ 27210. Special entities

27210. (a) A zoo is exempt from any permit requirement pursuant to this title except for animals whose importation, transportation, or possession is determined by the department, in cooperation with the Department of Food and Agriculture, to be detrimental or cause damage to agriculture, native wildlife, or the public health or safety. For purposes of this section, "zoo" means any organization which is accredited as meeting the standards and requirements of the American Zoo and Aquarium Association (AZA). Any California organization which is not accredited by the AZA may apply to the department for a waiver of specified permit requirements of this title. The department may grant or deny the request for a waiver for justified reasons. Foreign zoos outside this state are not subject to the permit requirements of this title beyond those specific permit requirements affecting California zoos or organizations with which they are collaborating. Any organization may appeal the determination of the department to the commission.

1 (b) An exhibitor licensed by the United States Department of Agriculture or a
2 dealer who is so licensed who buys any animal specified in subdivision (a) from a
3 zoo within the state, may sell or transfer it only to a private individual who has a
4 permit issued pursuant to this section prior to the receipt of the animal or to a
5 public or private organization that has a permit issued pursuant to this section prior
6 to the receipt of the animal. The exhibitor or dealer who sells or transfers that
7 animal shall pay a fee pursuant to subdivision (a) of Section 27215 to the
8 department.

9 (c) Any university, college, governmental research agency, or other bona fide
10 scientific institution, as defined in regulations adopted by the commission,
11 engaging in scientific or public health research is exempt from any permit
12 requirement pursuant to this title except for animals whose importation,
13 transportation, or possession is determined by the department, in cooperation with
14 the Department of Food and Agriculture, to be detrimental or cause damage to
15 agriculture, native wildlife, or the public health or safety.

16 (d) Notwithstanding the provisions of this section, every zoo, university, college,
17 governmental research agency, or other bona fide scientific institution shall
18 comply with the requirements of Section 27275 for all animals the zoo, university,
19 college, governmental research agency, or other bona fide scientific institution
20 possesses that are enumerated in, or designated pursuant to, Section 671 of Title
21 14 of the California Code of Regulations.

22 **Comment.** Section 27210 continues former Fish and Game Code Section 2150(c)-(f) without
23 substantive change.

24 § 27215. Fees

25 27215. (a) The department shall establish fees for permits, permit applications,
26 and facility inspections in amounts sufficient to cover the costs of administering,
27 implementing, and enforcing this part.

28 (b) Fees collected pursuant to this part for permits, permit applications, and
29 facility inspections shall be deposited in the Fish and Game Preservation Fund.
30 The department shall annually identify the amount collected for each type of
31 permit, permit application, or inspection for which a fee is collected.

32 **Comment.** Subdivision (a) of Section 27215 continues former Fish and Game Code Section
33 2150.2 without substantive change.

34 Subdivision (b) continues former Fish and Game Code Section 2150.1 without substantive
35 change.

36 § 27220. Advisory committee

37 27220. (a) The director shall appoint a committee to advise the director on the
38 humane care and treatment of wild animals.

39 (b) The committee shall make recommendations to the director for the
40 establishment of standards of performance for administration and enforcement,
41 which shall include, but are not limited to, requiring that the eligible local entity
42 possess a knowledge of humane wild animal training methods.

(c) The committee shall make recommendations to the director as to the frequency of inspections necessary for the enforcement and administration of any provision concerning the possession of, handling of, care for, or holding facilities provided for, a wild animal listed in or designated pursuant to Sections 26700 through 26730, inclusive.

(d) The committee shall advise and assist the director in entering into memorandums of understanding with eligible local entities and in determining whether the memorandums of understanding meet the requirements of this title.

Comment. Section 27220 continues former Fish and Game Code Section 2150.3 without substantive change.

Note. Existing Fish and Game Code Section 2150.3(c) (which would be continued by proposed Section 27020(c)) refers to a wild animal “designated pursuant to” existing Fish and Game Code Section 2118. Several other sections in the chapter in which Sections 2118 and 2150.3 appear refer to wild animals “enumerated in or designated pursuant to” Section 2118. For consistency, the proposed law would revise all of those references, including the reference in proposed Section 27020(c), to read “listed in or designated pursuant to” the provisions that would continue Section 2118.

The Commission invites comment on whether this revision would substantively change the intended meaning of existing Section 2150.3(c).

§ 27225. Inspection of facilities

27225. (a) The department or an eligible local entity shall inspect the wild animal facilities, as determined by the director’s advisory committee, of each person holding a permit issued pursuant to Section 27200 authorizing the possession of a wild animal.

(b) In addition to the inspections specified in subdivision (a), the department or an eligible local entity, pursuant to the regulations of the commission, may inspect the facilities and care provided for the wild animal of any person holding a permit issued pursuant to Section 27200 for the purpose of determining whether the animal is being cared for in accordance with all applicable statutes and regulations. The department shall collect an inspection fee, in an amount determined by the department pursuant to subdivision (a) of Section 27215.

(c) No later than January 1, 2009, the department, in cooperation with the committee created pursuant to Section 27220, shall develop, implement, and enter into memorandums of understanding with eligible local entities if the department elects not to inspect every wild animal facility pursuant to subdivisions (a) and (b). Eligible local entities shall meet the criteria established in regulations adopted pursuant to Section 27265.

Comment. Section 27225 continues former Fish and Game Code Section 2150.4 without substantive change.

§ 27230. Permit for animal acquired prior to 1975

27230. Classes, orders, families, genera, and species which may not be imported, transported, possessed, or released alive in this state solely because of

1 concern for the welfare of the animal may be possessed under permit when the
2 owner can demonstrate that such animal was legally acquired and possessed in
3 California before January 1, 1975. The department may require the owner of an
4 animal which may be possessed under this section to mark or otherwise identify
5 such animal and progeny, so as not to endanger the welfare of that animal, to the
6 satisfaction of the department. The owner shall not transfer such animal or
7 progeny to any other person without prior approval of the department.

8 **Comment.** Section 27230 continues former Fish and Game Code Section 2150.5 without
9 substantive change.

10 **§ 27235. Required content of permit application**

11 27235. A permit shall be issued only upon written application from the person
12 desiring to import or transport the species, enumerating all of the following:

13 (a) The approximate number and true scientific name of each species of wild
14 animal for which a permit is requested.

15 (b) The carrier and probable point of first arrival in this state of each shipment of
16 such species.

17 (c) The purpose for which they are to be imported or transported.

18 (d) The name and address of the consignee.

19 (e) The name and address of the consignor.

20 **Comment.** Section 27235 continues former Fish and Game Code Section 2151 without
21 substantive change.

22 **§ 27240. Content of permit**

23 27240. Each permit issued shall set forth all of the following:

24 (a) The number and true scientific name of the species of wild animal for which
25 the permit is granted.

26 (b) A statement of the manner and conditions under which the entry of such
27 species is permitted.

28 (c) A statement of the conditions under which the species shall be kept after
29 importation or during transportation.

30 **Comment.** Section 27240 continues former Fish and Game Code Section 2152 without
31 change.

32 **§ 27245. Distribution of copies of permit**

33 27245. Whenever any permit is issued under the provisions of this title, one
34 copy shall be sent by the department to the State Department of Food and
35 Agriculture, one copy to the county agricultural commissioner or to the state plant
36 quarantine officer having jurisdiction at the place designated in the application as
37 the probable point of first arrival in the state of such species, and one copy shall
38 accompany each shipment of wild animals involved.

39 **Comment.** Section 27245 continues former Fish and Game Code Section 2153 without
40 substantive change.

1 **§ 27250. Progeny of imported or possessed animals**

2 27250. The provisions of this part and regulations adopted pursuant to this part
3 shall apply to the progeny of any wild animal imported or possessed under those
4 laws and regulations, except that no permit shall be required for the possession of
5 progeny if a permit has already been obtained by the owner for the parent animal,
6 and the progeny are kept at the same site.

7 **Comment.** Section 27250 continues former Fish and Game Code Section 2155 without
8 substantive change.

9 **§ 27255. Local ordinances**

10 27255. Neither the provisions of this part nor the regulations of the commission
11 shall prevent any city or county from enacting ordinances relating to the
12 possession or care of wild animals, provided those ordinances are more restrictive.

13 **Comment.** Section 27255 continues former Fish and Game Code Section 2156 without
14 substantive change.

15 **§ 27260. Required reporting of health and safety risk**

16 27260. Every person holding a permit issued pursuant to Section 27200 shall
17 uniquely identify each wild mammal that poses a risk to the health and safety of
18 the public and report this identification to the department to maintain in a registry.

19 **Comment.** Section 27260 continues former Fish and Game Code Section 2157(a) without
20 substantive change.

21 **§ 27265. Commission regulations relating to identification of health and safety risk**

22 27265. The commission shall adopt regulations that address the following:

23 (a) Identify the mammals that pose a risk to the health and safety of the public
24 and are subject to Section 27260. This identification shall include the following
25 species of mammals:

26 (1) Wild cats.

27 (2) Elephants.

28 (3) Nonhuman primates.

29 (4) Bears.

30 (5) Wolves.

31 (b) Acceptable forms of identification.

32 (c) How and when a permittee must notify the department of the unique
33 identifier required by Section 27260.

34 (d) These regulations shall be developed and adopted by the commission, on or
35 before January 1, 2007.

36 **Comment.** Section 27265 continues former Fish and Game Code Section 2157(b) and (d)
37 without substantive change.

38 **§ 27270. Department to establish registry**

39 27270. The department shall establish a registry listing the permit number, type,
40 expiration date, name and address of the permittee, and an inventory of each

mammal covered by the permit and the identification assigned or affixed to that mammal pursuant to Section 27260.

Comment. Section 27270 continues former Fish and Game Code Section 2157(c) without substantive change.

§ 27275. Required reporting of escape or release

27275. (a) Every person who holds a permit issued pursuant to Section 27200 shall immediately report by telephone the intentional or unintentional escape or release of any wild animal covered by the permit, to the department and the nearest enforcing officer of the city or county in which the wild animal was released or escaped.

(b) The permitholder shall be liable for all expenses associated with efforts to recapture the wild animal.

(c) For the purposes of this section, the exhibition of a wild animal on a movie set, film set, television set, still photography set, or any other professional activity allowable under a permit issued pursuant to Section 27200, does not constitute an intentional or unintentional escape or release of the wild animal unless the person exhibiting the wild animal has lost control of the wild animal.

Comment. Section 27275 continues former Fish and Game Code Section 2193(a) without substantive change.

§ 27280. Commission regulations relating to taking possession of permitted animal

27280. (a) The commission shall promulgate regulations establishing the criteria for permitholders to notify the department prior to taking possession of or transferring an animal and upon the death of an animal.

(b) These regulations shall be developed and adopted by the commission on or before January 1, 2007.

Comment. Section 27280 continues former Fish and Game Code Section 2193(b)-(c) without change.

TITLE 4. INSPECTION OF ARRIVING ANIMAL

§ 27400. Special definition of “enforcing officer”

27400. Notwithstanding Section 26505, for the purposes of this title, “enforcing officer” means the enforcement personnel of the department, the state plant quarantine officers, and county agricultural commissioners.

Comment. Section 27400 continues former Fish and Game Code Sections 2185(b), 2186(b), and 2187(b) without substantive change.

§ 27405. Notification of law enforcement of arriving wild animal

27405. Any person who transports, receives, or imports into the state, or transports within the state, any live wild animal listed in or designated pursuant to Section 26700 through 26730, inclusive, shall hold that animal in confinement for

inspection, and immediately notify the nearest enforcing officer of the arrival of that animal. If there is found in any shipment any animal of a species not specified in the permit issued under this part, or more than the number of animals of any species specified, those animals shall be disposed of as provided in subdivision (b) of Section 27505.

Comment. Section 27405 continues former Fish and Game Code Section 2185(a) without substantive change.

Note. The second sentence of existing Fish and Game Code Section 2185(a) (which would be continued by proposed Section 27405) provides that if an enforcing officer finds in any shipment of wild animals transported into this state any animal of a species not specified in a permit issued under this part, or more than the number of animals of any species specified, those animals shall be “refused admittance as provided in Section 2188 of this part.” However, former Fish and Game Code Section 2188 was repealed by 1989 Cal. Stat. ch. 431, a bill that also added to existing law Fish and Game Code Section 2189 (which would be continued by proposed Sections 27500, 27505, and 27510).

Proposed Section 27405 would revise the quoted language above to instead refer to and reflect the language of the section of the proposed law that would continue existing Fish and Game Code Section 2189(c), which refers to the “disposition” of a live nonnative wild animal that is possessed or transported within this state in violation of the chapter of existing law containing Section 2189, and which also contained Section 2188.

The Commission invites comment on the appropriateness of this revision.

§ 27410. Discovery of disease during inspection

27410. If during inspection upon arrival any wild animal is found to be diseased, or there is reason to suspect the presence of disease, or there is reason to suspect the presence of disease that is or may be detrimental to agriculture, to native wildlife, or to the public health or safety, the diseased animal, and if necessary, the entire shipment shall be destroyed by, or under the supervision of, the enforcing officer, unless no detriment can be caused by its detention in quarantine for a time and under conditions satisfactory to the enforcing officer for disinfection, treatment, or diagnosis, or no detriment can be caused by its return to its point of origin at the option and expense of the owner or possessor.

Comment. Section 27410 continues former Fish and Game Code Section 2186(a) without change.

§ 27415. Periodic subsequent examination of animal

27415. (a) Whenever any wild animal is brought into this state under permit, as provided in this part, the enforcing officers may, from time to time, examine the conditions under which that species is kept, and report to the department any suspicion or knowledge of any disease or violations of the conditions of the permit or of the regulations promulgated under this part.

(b) The enforcing officer may order the transfer of the animal to new owners or the correction of the conditions under which the species is being kept if not in conformance with the terms of the permit, at the expense of the owner or

1 possessor. If neither transfer or improvement of conditions is accomplished, the
2 officer may order destruction of the animal.

3 **Comment.** Section 27415 continues former Fish and Game Code Section 2187(a) without
4 substantive change.

5 TITLE 5. NONNATIVE WILD ANIMALS

6 § 27500. “Nonnative wild animal”

7 27500. (a) As used in this title, “nonnative wild animal” means any nonnative
8 animal species, or hybrid thereof, that is not normally domesticated pursuant to
9 this code or regulations adopted pursuant to this code, and that is not designated as
10 a furbearing, game, nongame, threatened, or endangered animal.

11 **Comment.** Section 27500 continues former Fish and Game Code Section 2189(a) without
12 change.

13 § 27505. Prohibitions

14 27505. (a) No person shall import into this state any live nonnative wild animal
15 except pursuant to this part, or regulations adopted pursuant to this part.

16 (b) Any live nonnative wild animal that is possessed or transported within this
17 state in violation of this part or regulations adopted pursuant to this part shall be
18 disposed of in accordance with regulations adopted pursuant to Section 26610, at
19 the expense of the owner or possessor. The owner or possessor shall pay the costs
20 associated with the seizure, care, holding, transfer, and destruction of the animal.

21 **Comment.** Section 27505 continues former Fish and Game Code Section 2189(b)-(c) without
22 change.

23 § 27510. Animals found at large

24 27510. (a) Any live, nonnative wild animal found at large within this state shall
25 be either summarily destroyed or, if captured, shall be confined for not less than
26 72 hours following notification of the local humane society. Any local, state, or
27 federal governmental agency that has public safety responsibilities is authorized to
28 implement this subdivision.

29 (b) If, during the 72-hour holding period, any person claims ownership of the
30 animal, that person shall only be allowed to dispose of the animal pursuant to
31 subdivision (c).

32 (c) After the 72-hour holding period, if the animal is unclaimed, it shall be
33 disposed of in accordance with regulations adopted pursuant to Section 26610,
34 unless the animal is listed as a threatened or endangered species by either state or
35 federal regulation. Notwithstanding subdivision (c), if the animal is listed as a
36 threatened or endangered species in either state or federal regulation, the
37 department shall be notified of the animal’s location and the department shall be
38 responsible for proper disposition.

1 **Comment.** Section 27510 continues former Fish and Game Code Section 2189(d)-(f) without
2 substantive change.

3 TITLE 6. MAMMALS USED FOR HIRE

4 **§ 27600. “Mammal”**

5 27600. For purposes of this title, “mammal” means any wild animal of the class
6 Mammalia as specified in Section 26705 or as specified in a regulation adopted
7 pursuant to Title 2, which affects commerce.

8 **Comment.** Section 27600 continues former Fish and Game Code Section 2200 without
9 substantive change.

10 **§ 27605. Animal Trust Fund**

11 27605. The Animal Trust Fund is hereby established in the State Treasury. Upon
12 appropriation by the Legislature, the money in the fund is available to the
13 department for the administration of this title and to make grants pursuant to
14 Section 27615. The department may use not more than 5 percent of the money in
15 the fund for the costs of administering this title.

16 **Comment.** Section 27605 continues former Fish and Game Code Section 2201 without
17 substantive change.

18 **§ 27610. Grants and donations**

19 27610. The department may seek grants and accept donations from private and
20 public organizations and agencies for the purposes of this chapter for deposit in
21 the Animal Trust Fund.

22 **Comment.** Section 27610 continues former Fish and Game Code Section 2202 without
23 change.

24 **§ 27615. Regulations relating to grant program**

25 27615. (a) The director, with the advice of the committee established pursuant to
26 Section 27220, shall adopt regulations to establish and administer a grant program,
27 including eligibility criteria, by which persons or governmental agencies who
28 operate facilities to care and shelter mammals may apply for grants for
29 maintenance, operations, and capital improvements. The program shall include
30 provisions for emergency grants with an expedited review process.

31 (b) Each member of the committee who is eligible to receive per diem and
32 mileage shall be allowed per diem and mileage in accordance with the rules of the
33 Department of Human Resources for attending any meeting of the committee
34 involving this title.

35 **Comment.** Section 27615 continues former Fish and Game Code Section 2203 without
36 substantive change.

1 TITLE 7. MISCELLANEOUS PROVISIONS

2 § 27700. Prohibited release of wild animal

3 27700. It is unlawful for any person who keeps in confinement, with or without
4 a permit, any wild animal of a species listed in or designated pursuant to Sections
5 26700 through 26730, inclusive, to liberate, ship, or transport the animal except in
6 accordance with the conditions of a permit first obtained from the department.

7 **Comment.** Section 27700 continues former Fish and Game Code Section 2190 without
8 substantive change.

9 § 27705. Civil action to recover costs

10 27705. When a wild animal enumerated in or designated pursuant to Section 671
11 of Title 14 of the California Code of Regulations is properly confiscated by the
12 department, the new custodian with whom the animal is placed by the department
13 may bring a civil action to recover the reasonable costs incurred by the custodian
14 for any necessary relocation of the animal to a new facility, any actual and
15 necessary costs to construct new caging to house the animal, and any actual and
16 necessary costs to return the animal to a healthy state, to the extent that the
17 department or new custodian has not already collected the costs pursuant to
18 Section 27015. The prior owner or possessor from whom the animal was
19 confiscated shall be liable for these costs only if the conditions that led to the
20 animal's confiscation were the result of acts or omissions of the prior owner or
21 possessor.

22 **Comment.** Section 27705 continues former Fish and Game Code Section 2195 without
23 substantive change.

24 § 27710. Regulations relating to caging standards

25 27710. Notwithstanding Part 2.5 (commencing with Section 18900) of Division
26 13 of the Health and Safety Code, Section 11356 of the Government Code, or any
27 other provision of law, regulations of the commission relating to the construction,
28 fixtures, and other minimum caging standards adopted by the commission for the
29 confinement of live wild animals pursuant to this part are not building standards
30 subject to the approval of the State Building Standards Commission.

31 **Comment.** Section 27710 continues former Fish and Game Code Section 2192 without
32 substantive change.

1 PART 7. IMPORTATION AND TRANSPORTATION OF LIVE PLANTS
2 AND ANIMALS

3 TITLE 1. BIRDS

4 § 28000. Prohibition against transport of specified live birds

5 28000. Except as otherwise provided, it is unlawful for any common carrier to
6 transport any live protected nongame bird or any live resident or migratory game
7 bird for which there is no open season.

8 **Comment.** Section 28000 continues former Fish and Game Code Section 2225 without
9 change.

10 TITLE 2. AQUATIC PLANTS AND ANIMALS

11 § 28100. Potentially diseased plants or animals

12 28100. It is unlawful for any person to receive, bring, or cause to be brought into
13 this state, for the purpose of propagation, any fish, reptile, amphibian, or aquatic
14 plant from any place wherein any infected, diseased, or parasitized fish, reptile,
15 amphibian, or aquatic plants are known to exist.

16 **Comment.** Section 28100 continues former Fish and Game Code Section 2270 without
17 substantive change.

18 § 28105. Aquaculture exception

19 28105. Section 28100 does not apply to the importation of live aquatic plants or
20 animals for aquaculture purposes by a registered aquaculturist if the importation
21 has been approved by the department pursuant to Sections 24705 and 24710.

22 **Comment.** Section 28105 continues former Fish and Game Code Section 2270.5 without
23 substantive change.

24 § 28110. Approval from department required for importation

25 28110. (a) No live aquatic plant or animal may be imported into this state
26 without the prior written approval of the department pursuant to regulations
27 adopted by the commission.

28 (b) A written application for the importation, submitted in conformance with the
29 procedural requirements established by the commission, is deemed approved
30 where it has not been denied within 60 days.

31 (c) This section does not apply to the following plants or animals unless the
32 plants or animals are or may be placed in waters of the state:

33 (1) Mollusks.

34 (2) Crustaceans.

(3) Ornamental marine or freshwater plants and animals that are not utilized for human consumption or bait purposes and are maintained in closed systems for personal, pet industry, or hobby purposes.

(d) The section does not apply to any live aquatic plant or animal imported by a registered aquaculturist.

Comment. Section 28110 continues former Fish and Game Code Section 2271 without substantive change.

§ 28115. Packaging

28115. Each package containing any live aquatic plant or animal shall bear, in a conspicuous place, a tag on which shall be stated the name and address of the consignor, the name and address of the consignee, and the exact contents of the package.

Comment. Section 28115 continues former Fish and Game Code Section 2272 without change.

PART 8. AQUATIC INVASIVE SPECIES

TITLE 1. GENERAL PROVISIONS [RESERVED]

TITLE 2. CAULERPA SPECIES

§ 28250. Prohibition

28250. (a) No person shall sell, possess, import, transport, transfer, release alive in the state, or give away without consideration the salt water algae of the *Caulerpa* species: *taxifolia*, *cupressoides*, *mexicana*, *sertularioides*, *floridana*, *ashmeadii*, *racemosa*, *verticillata*, and *scapelliformis*.

(b) Notwithstanding subdivision (a), a person may possess, for bona fide scientific research, as determined by the department, upon authorization by the department, the salt water algae of the *Caulerpa* species: *taxifolia*, *cupressoides*, *mexicana*, *sertularioides*, *floridana*, *ashmeadii*, *racemosa*, *verticillata*, and *scapelliformis*.

Comment. Section 28250 continues former Fish and Game Code Section 2300(a)-(b) without change.

§ 28255. Punishment

28255. In addition to any other penalty provided by law, any person who violates Section 28250 is subject to a civil penalty of not less than five hundred dollars (\$500) and not more than ten thousand dollars (\$10,000) for each violation.

Comment. Section 28255 continues former Fish and Game Code Section 2300(c) without substantive change.

PART 9. IMPORTATION AND TRANSPORTATION OF DEAD
ANIMALS

TITLE 1. DEAD WILD ANIMALS

§ 28400. Application of title

28400. (a) This title applies to all dead wild birds, mammals, fish, reptiles, and amphibians. This chapter also applies to live mollusks and crustaceans that are transported for purposes other than placement in the waters of this state.

(b) This chapter does not apply to animals imported for purposes of aquaculture under Part 1 (commencing with Section 23300).

Comment. Section 28400 continues former Fish and Game Code Section 2345 without substantive change.

§ 28405. Transportation of more than bag limit

28405. (a) It is unlawful for a common carrier or his or her agent to transport for, or to receive for transportation from, any one person, during any interval of time, more than the bag limit of birds, mammals, fish, reptiles, or amphibians that may legally be taken and possessed by that person during that interval.

(b) It is unlawful for any person to offer for transportation by common carrier during any interval of time more than the bag limit of birds, mammals, fish, reptiles, or amphibians that may legally be taken and possessed by that person during that interval.

Comment. Subdivision (a) of Section 28405 continues former Fish and Game Code Section 2346 without change.

Subdivision (b) continues former Fish and Game Code Section 2347 without substantive change.

§ 28410. Marking on packaging containing animal

28410. (a) The outside of a package offered to or received by a common carrier or the carrier's agent for transportation, or transported by a common carrier or agent, that contains a bird, mammal, fish, reptile, or amphibian, shall clearly and conspicuously indicate the following:

(1) The name and address of the shipper.

(2) The name and address of the consignee.

(3) The number and kind of bird, mammal, fish, reptile, and amphibian contained in the package.

(b) Licensed commercial fishermen and licensed commercial fish dealers are subject to all of the provisions of this section, except that commercial shipments of fish may be indicated by total net weight of each species instead of by numbers.

Comment. Section 28410 continues former Fish and Game Code Section 2348 without substantive change.

1 **§ 28415. Parcel post generally prohibited**

2 28415. No bird, mammal, fish, reptile, or amphibian, except smoked, cured, or
3 dried fish other than trout, may be shipped by parcel post.

4 **Comment.** Section 28415 continues former Fish and Game Code Section 2349 without
5 substantive change.

6 **§ 28420. Transport of specified birds**

7 28420. Except as permitted by this code, it is unlawful for any common carrier
8 to transport any protected nongame bird, or to transport any resident or migratory
9 game bird for which there is no open season.

10 **Comment.** Section 28420 continues former Fish and Game Code Section 2352 without
11 substantive change.

12 **§ 28425. Requirements for importation or possession**

13 28425. (a) Birds, mammals, fish, reptiles, or amphibians shall not be imported or
14 possessed in this state unless all of the following requirements are met:

15 (1) The animals were legally taken and legally possessed outside of this state.

16 (2) This code and regulations adopted pursuant thereto do not expressly prohibit
17 their possession in this state.

18 (3) A declaration is submitted to the department or a designated state or federal
19 agency at or immediately before the time of entry, in the form and manner
20 prescribed by the department.

21 (b) Birds, mammals, fish, reptiles, or amphibians legally taken and legally
22 possessed outside of this state may be imported into this state and possessed
23 without a declaration if the shipment is handled by a common carrier under a bill
24 of lading or as supplies carried into this state by common carriers for use as food
25 for the passengers.

26 (c) The commission and the department shall not modify this section by any
27 regulation that would prohibit the importation of lawfully killed migratory game
28 birds taken in any other state or country and transported into this state pursuant to
29 the migratory bird regulations adopted annually by the Secretary of the Interior.

30 **Comment.** Section 28425 continues former Fish and Game Code Section 2353 without
31 change.

32 **TITLE 2. DEAD DOMESTICATED BIRDS AND MAMMALS**

33 **§ 28500. Transport by common carrier**

34 28500. (a) A common carrier may transport the carcass of a dead domesticated
35 game bird or mammal tagged with a domesticated game breeder's tag as provided
36 in Title 1 (commencing with Section 26000) of Part 4.

37 (b) A tag or label shall be affixed to every package containing a carcass
38 transported pursuant to subdivision (a), which shall state all of the following:

39 (1) The name of the person to whom the game breeder's license was issued.

- 1 (2) The name of the person who killed the game bird or mammal.
- 2 (3) The name of the person to whom the game bird or mammal is consigned.
- 3 (4) The name of the person who tagged the game bird or mammal.
- 4 (5) The number of carcasses or parts of carcasses contained in the package.
- 5 (6) That the game birds or mammals were killed and tagged in accordance with
- 6 the provisions of Title 1 (commencing with Section 26000) of Part 4.
- 7 **Comment.** Section 28500 continues former Fish and Game Code Section 2400 without
- 8 substantive change.

9 **§ 28505. Domesticated game birds raised outside state**

10 28505. (a) Notwithstanding the provisions of Section 26035, the carcasses or

11 parts of domesticated game birds that have been raised outside of this state may be

12 imported into this state, and transported, sold, or possessed in this state.

13 (b) A common carrier may receive and transport carcasses or parts of game

14 birds described in subdivision (a) at any time. A label shall be affixed to every

15 package containing those carcasses or parts with the following plainly written or

16 printed on the label:

- 17 (1) The names and addresses of the consignor and consignee.
- 18 (2) The number and kinds of carcasses or parts.
- 19 (3) A statement that the contents are carcasses or parts of domesticated game
- 20 birds raised outside this State.

21 **Comment.** Section 28505 continues former Fish and Game Code Section 2401 without

22 substantive change.

23 References to “parts” of domesticated game birds in this section is superfluous. See Section 95

24 (reference to animal generally includes part of animal). Those references are retained solely for

25 clarity, and are not intended to affect the meaning of any other provision of this code that includes

26 or omits a reference to a “part” of an animal.

27 **PART 10. PROHIBITED SALE AND POSSESSION FOR SALE**

28 **TITLE 1. POSSESSION IN EATING**

29 **ESTABLISHMENT**

30 **§ 28600. Prohibition**

31 28600. (a) Except as otherwise provided in this section, it is unlawful to possess

32 a bird, mammal, fish, amphibian, or reptile, that may not be legally sold, in a

33 restaurant or other eating establishment.

34 (b) This section does not apply to any of the following:

35 (1) A person who lawfully took or otherwise legally possessed the bird,

36 mammal, fish, or amphibian.

37 (2) A person preparing the bird, mammal, fish, amphibian, or reptile for

38 consumption by the person who lawfully took or possessed it, or by that person

39 and others, if the person who took or possessed it is present on the premises.

(3) A bird, mammal, fish, amphibian, or reptile tagged with a signed statement of the person who took the bird, mammal, fish, amphibian, or reptile, stating that person's name and address, the date taken, and the total number and kind taken.

Comment. Section 28600 continues former Fish and Game Code Section 2015 without change.

TITLE 2. IVORY AND RHINOCEROS HORNS

§ 28650. Definitions

28650. For the purposes of this part, the following terms have the following meanings:

(a) "Bona fide educational or scientific institution" means an institution that establishes through documentation either of the following:

(1) Educational or scientific tax exemption, from the federal Internal Revenue Service or the institution's national, state, or local tax authority.

(2) Accreditation as an educational or scientific institution, from a qualified national, regional, state, or local authority for the institution's location.

(b) "Ivory" means a tooth or tusk from a species of elephant, hippopotamus, mammoth, mastodon, walrus, warthog, whale, or narwhal, or a piece thereof, whether raw ivory or worked ivory, and includes a product containing, or advertised as containing, ivory.

(c) "Rhinoceros horn" means the horn, or a piece thereof, or a derivative such as powder, of a species of rhinoceros, and includes a product containing, or advertised as containing, a rhinoceros horn.

(d) "Sale" or "sell" means selling, trading, bartering for monetary or nonmonetary consideration, giving away in conjunction with a commercial transaction, or giving away at a location where a commercial transaction occurred at least once during the same or the previous calendar year.

(e) "Total value" means either the fair market value or the actual price paid for ivory or rhinoceros horn, whichever is greater.

Comment. Section 28650 continues former Fish and Game Code Section 2022(a) without change.

§ 28655. Prohibition

28655. (a) Except as provided in subdivision (b), it is unlawful to purchase, sell, offer for sale, possess with intent to sell, or import with intent to sell ivory or rhinoceros horn.

(b) The prohibitions set forth in subdivision (a) do not apply to any of the following:

(1) An employee or agent of the federal or state government undertaking a law enforcement activity pursuant to federal or state law, or a mandatory duty required by federal law.

1 (2) An activity that is authorized by an exemption or permit under federal law or
2 that is otherwise expressly authorized under federal law.

3 (3) Ivory or rhinoceros horn that is part of a musical instrument, including, but
4 not limited to, a string or wind instrument or piano, and that is less than 20 percent
5 by volume of the instrument, if the owner or seller provides historical
6 documentation demonstrating provenance and showing the item was manufactured
7 no later than 1975.

8 (4) Ivory or rhinoceros horn that is part of a bona fide antique and that is less
9 than five percent by volume of the antique, if the antique status is established by
10 the owner or seller of the antique with historical documentation demonstrating
11 provenance and showing the antique to be not less than 100 years old.

12 (5) The purchase, sale, offer for sale, possession with intent to sell, or
13 importation with intent to sell ivory or rhinoceros horn for educational or scientific
14 purposes by a bona fide educational or scientific institution if both of the
15 following criteria are satisfied:

16 (A) The purchase, sale, offer for sale, possession with intent to sell, or import
17 with intent to sell the ivory or rhinoceros horn is not prohibited by federal law.

18 (B) The ivory or rhinoceros horn was legally acquired before January 1, 1991,
19 and was not subsequently transferred from one person to another for financial gain
20 or profit after July 1, 2016.

21 **Comment.** Section 28655 continues former Fish and Game Code Section 2022(b) and (c)
22 without change.

23 **§ 28660. Prima facie evidence**

24 28660. Possession of ivory or rhinoceros horn in a retail or wholesale outlet
25 commonly used for the buying or selling of similar items is prima facie evidence
26 of possession with intent to sell. This evidence does not preclude a finding of
27 intent to sell based on any other evidence that may serve to establish that intent
28 independently or in conjunction with this evidence.

29 **Comment.** Section 28660 continues former Fish and Game Code Section 2022(d) without
30 change.

31 **§ 28665. Punishment**

32 28665. For a violation of any provision of this part or any rule, regulation, or
33 order adopted pursuant to this part, the following criminal penalties shall be
34 imposed:

35 (a) For a first conviction, where the total value of the ivory or rhinoceros horn is
36 two hundred fifty dollars (\$250) or less, the offense shall be a misdemeanor
37 punishable by a fine of not less than one thousand dollars (\$1,000), or more than
38 ten thousand dollars (\$10,000), imprisonment in a county jail for not more than 30
39 days, or by both the fine and imprisonment.

40 (b) For a first conviction, where the total value of the ivory or rhinoceros horn is
41 more than two hundred fifty dollars (\$250), the offense shall be a misdemeanor

1 punishable by a fine of not less than five thousand dollars (\$5,000), or more than
2 forty thousand dollars (\$40,000), imprisonment in a county jail for not more than
3 one year, or by both the fine and imprisonment.

4 (c) For a second or subsequent conviction, where the total value of the ivory or
5 rhinoceros horn is two hundred fifty dollars (\$250) or less, the offense shall be a
6 misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000),
7 or more than forty thousand dollars (\$40,000), imprisonment in county jail for not
8 more than one year, or by both the fine and imprisonment.

9 (d) For a second or subsequent conviction, where the total value of the ivory or
10 rhinoceros horn is more than two hundred fifty dollars (\$250), the offense shall be
11 a misdemeanor punishable by a fine of not less than ten thousand dollars
12 (\$10,000), or more than fifty thousand dollars (\$50,000) or the amount equal to
13 two times the total value of the ivory or rhinoceros horn involved in the violation,
14 whichever is greater, imprisonment in county jail for not more than one year, or by
15 both the fine and imprisonment.

16 **Comment.** Section 28665 continues former Fish and Game Code Section 2022(e) without
17 substantive change.

18 **§ 28670. Administrative penalty**

19 28670. (a) In addition to, and separate from, any criminal penalty provided for
20 under Section 28665, an administrative penalty of up to ten thousand dollars
21 (\$10,000) may be imposed for a violation of any provision of this part, or any rule,
22 regulation, or order adopted pursuant to this part.

23 (b) Penalties authorized pursuant to this section may be imposed by the
24 department consistent with all of the following:

25 (1) The chief of enforcement issues a complaint to any person or entity on which
26 an administrative penalty may be imposed pursuant to this section. The complaint
27 shall allege the act or failure to act that constitutes a violation, relevant facts, the
28 provision of law authorizing the administrative penalty to be imposed, and the
29 proposed penalty amount.

30 (2) The complaint and order is served by personal notice or certified mail and
31 informs the party served that the party may request a hearing no later than 20 days
32 from the date of service. If a hearing is requested, it shall be scheduled before the
33 director or his or her designee, which designee shall not be the chief of
34 enforcement issuing the complaint and order. A request for hearing shall contain a
35 brief statement of the material facts the party claims support his or her contention
36 that an administrative penalty should not be imposed or that an administrative
37 penalty of a lesser amount is warranted. A party served with a complaint pursuant
38 to this subdivision waives the right to a hearing if no hearing is requested within
39 20 days of service of the complaint, in which case the order imposing the
40 administrative penalty shall become final.

41 (3) The director, or his or her designee, shall control the nature and order of the
42 hearing proceedings. Hearings shall be informal in nature, and need not be

1 conducted according to the technical rules relating to evidence. The director, or his
2 or her designee, shall issue a final order within 45 days of the close of the hearing.
3 A final copy of the order shall be served by certified mail upon the party served
4 with the complaint.

5 (4) A party may obtain review of the final order by filing a petition for a writ of
6 mandate with the superior court within 30 days of the date of service of the final
7 order. The administrative penalty shall be due and payable to the department
8 within 60 days after the time to seek judicial review has expired or, where the
9 party has not requested a hearing of the order, within 20 days after the order
10 imposing an administrative penalty becomes final.

11 (c) Administrative penalties collected pursuant to this section shall be deposited
12 in the Fish and Game Preservation Fund and used for law enforcement purposes
13 upon appropriation by the Legislature.

14 **Comment.** Section 28670 continues former Fish and Game Code Section 2022(f) and (i)
15 without substantive change.

16 **§ 28675. Payment of reward**

17 28675. (a) For any conviction or other entry of judgment imposed by a court for
18 a violation of this part resulting in a fine, the court may pay one-half of the fine,
19 but not to exceed five hundred dollars (\$500), to any person giving information
20 that led to the conviction or other entry of judgment.

21 (b) This reward shall not apply if the informant is a regular salaried law
22 enforcement officer, or officer or agent of the department.

23 **Comment.** Section 28675 continues former Fish and Game Code Section 2022(g) without
24 substantive change.

25 **§ 28680. Forfeiture**

26 28680. Upon conviction or other entry of judgment for a violation of this part,
27 any seized ivory or rhinoceros horn shall be forfeited and, upon forfeiture, either
28 maintained by the department for educational or training purposes, donated by the
29 department to a bona fide educational or scientific institution, or destroyed.

30 **Comment.** Section 28680 continues former Fish and Game Code Section 2022(h) without
31 substantive change.

32 **§ 28685. Enforcement under Penal Code Section 653o**

33 28685. This part does not preclude enforcement under Section 653o of the Penal
34 Code.

35 **Comment.** Section 28685 continues former Fish and Game Code Section 2022(j) without
36 substantive change.

1 TITLE 3. SALE OR PURCHASE OF BIRD OR
2 MAMMAL FOUND IN WILD

3 § 28750. Prohibition

4 28750. (a) Except as otherwise provided in this section, Section 10830, Section
5 34410, another provision of this code, or a regulation adopted pursuant to this
6 code, it is unlawful to sell or purchase a bird or mammal found in the wild in
7 California.

8 (b) Products or handicraft items made from furbearing mammals and nongame
9 mammals lawfully taken under the authority of a trapping license may be
10 purchased or sold at any time.

11 (c) Shed antlers, or antlers taken from domestically reared animals that have
12 been manufactured into products or handicraft items, or that have been cut into
13 blocks or units that are to be handcrafted or manufactured into those articles, may
14 be purchased or sold at any time. However, complete antlers, whole heads with
15 antlers, antlers that are mounted for display, or antlers in velvet, may not be sold
16 or purchased at any time, except as authorized by Section 10830.

17 (d) Notwithstanding Section 28910, inedible parts of domestically raised game
18 birds may be sold or purchased at any time.

19 (e) A person who illegally takes a bird or mammal for profit or for personal gain
20 by engaging in an activity authorized by this section is subject to civil liability
21 pursuant to Section 9305.

22 **Comment.** Section 28750 continues former Fish and Game Code Section 3039 without
23 substantive change.

24 DIVISION 8. BIRDS

25 PART 1. GENERAL PROVISIONS

26 § 28900. Governance by other provisions

27 28900. Animals governed by this division are also governed by other provisions
28 of this code, including but not limited to Divisions 6 (commencing with Section
29 8000) and 7 (commencing with Section 23300).

30 **Comment.** Section 28900 is new. It is added for drafting convenience.

31 § 28905. Bird nest or eggs

32 28905. (a) It is unlawful to take, possess, or needlessly destroy the nest or eggs
33 of any bird, except as provided by this code or any regulation adopted pursuant to
34 this code.

35 (b) Except as provided in subdivision (d) of Section 10110, the punishment for a
36 violation of this section is a fine of not more than five thousand dollars (\$5,000),

imprisonment in a county jail for not more than six months, or by both that fine and imprisonment.

Comment. Subdivision (a) of Section 28905 continues former Fish and Game Code Section 3503 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable to former Fish and Game Code Section 3503 without substantive change.

Note. Existing Section 12002(c), which would be continued in part by proposed Section 28905(b), provides as follows:

“Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.”

However, Section 12010 addresses only the maximum punishment for a violation of existing Section 3503.5 (governing the taking or possession of birds of prey). **The reference to existing Section 12010 has therefore been deleted from proposed Section 28905(b).**

§ 28910. Sale or purchase of game or nongame bird

28910. Subject to the provisions of this code permitting the sale of domestically raised game birds, it is unlawful to sell or purchase a game bird or nongame bird.

Comment. Section 28910 continues former Fish and Game Code Section 3504 without change.

§ 28915. Control of birds unduly preying on other animals

28915. The department may take any individual bird, or birds of any species, that, in its opinion, are unduly preying upon any species of bird, mammal, reptile, amphibian, or fish.

Comment. Section 28915 continues former Fish and Game Code Section 3803 without change.

PART 2. DISEASE CONTROL

TITLE 1. GENERAL PROVISIONS [RESERVED]

TITLE 2. AVIAN INFLUENZA WILDLIFE SURVEILLANCE ACT

§ 29050. Name of act

29050. This title shall be known, and may be cited, as the Avian Influenza Wildlife Surveillance Act.

Comment. Section 29050 continues former Fish and Game Code Section 3860 without substantive change.

1 **§ 29055. Findings and declarations**

2 29055. The Legislature finds and declares all of the following:

3 (a) Avian influenza and other emerging diseases of wildlife are a serious threat
4 to the people of California.

5 (b) California is home to large populations of migratory birds and other wildlife
6 species.

7 (c) California is a central part of the Pacific Flyway, and a seasonal home to
8 species of birds that migrate to and from Asia, Central America, South America,
9 and other regions.

10 (d) Surveillance of wild birds and animals across the state is a key element
11 among efforts to prevent avian influenza and other emerging wildlife diseases
12 from harming the people and the natural resources of the state.

13 (e) In the interest of public health, the state shall support a surveillance program
14 for avian influenza in wild bird and animal populations.

15 **Comment.** Section 29055 continues former Fish and Game Code Section 3861 without
16 change.

17 **§ 29060. Consultation among agencies to develop plan**

18 29060. The Natural Resources Agency, in consultation with the department, the
19 Department of Food and Agriculture, the State Department of Public Health, the
20 Office of Emergency Services, and the University of California, shall develop and
21 implement a plan for the surveillance, monitoring, sampling, diagnostic testing,
22 and reporting of avian influenza in wild birds and animals in the state. The Natural
23 Resources Agency shall consult with the United States Fish and Wildlife Service
24 and the United States Department of Food and Agriculture in developing the plan.

25 **Comment.** Section 29060 continues former Fish and Game Code Section 3862 without
26 change.

27 **§ 29065. Avian Influenza Working Group**

28 29065. (a) The Secretary of the Natural Resources Agency shall formally
29 establish the Avian Influenza Working Group to assist in the development of the
30 plan described in Section 29060. The Avian Influenza Working Group shall
31 utilize, as guidance for early detection, the national protocol that has been
32 developed to guide states in developing state-specific plans, known as the Early
33 Detection System for Asian H5N1 Highly Pathogenic Avian Influenza in Wild
34 Migratory Birds. The Avian Influenza Working Group shall also continue,
35 enhance, and facilitate the work already begun by the department, other state
36 departments, and the University of California, to coordinate communication of
37 information and response plans for highly pathogenic avian influenza in wild
38 birds.

39 (b) The Avian Influenza Working Group shall be composed of all of the
40 following members:

41 (1) The Secretary of the Natural Resources Agency, or a designee.

(2) The director, or a designee.

(3) The Secretary of Food and Agriculture, or a designee.

(4) The State Public Health Officer, or a designee.

(5) The Director of Emergency Services, or a designee.

(6) One representative appointed by the Regents of the University of California.

(7) Two representatives from a qualified research organization or other qualified nongovernmental organization appointed by the Secretary of the Natural Resources Agency.

(c) The director shall chair the Avian Influenza Working Group.

(d) A majority of the Avian Influenza Working Group shall constitute a quorum for the transaction of business.

(e) The duties of the Avian Influenza Working Group shall include all of the following:

(1) Developing strategies for the detection of, and response to, the avian influenza virus in wild birds in California.

(2) Fostering communication among state and federal agencies regarding the avian influenza surveillance program.

(3) Developing strategies for public outreach and education.

(f) The Avian Influenza Working Group may consult with other public and nonprofit groups potentially affected by avian influenza in wild birds.

Comment. Section 29065 continues former Fish and Game Code Section 3863 without substantive change.

PART 3. CLASSES OF BIRDS

TITLE 1. MIGRATORY BIRDS

§ 29200. Taking

29200. Migratory game birds may be taken in conformity with federal laws and regulations and the regulations of the commission adopted pursuant to this title.

Comment. Section 29200 restates the first paragraph of former Fish and Game Code Section 356 without substantive change.

Note. Proposed Section 29200 is intended to restate the first paragraph of existing Section 356, to clarify its meaning without changing its substantive effect. The existing provision reads as follows:

“Migratory game birds may be taken in conformity with the federal laws and regulations and the regulations of the commission as provided in Section 355.”

The cross-reference to regulations of the Commission “as provided in Section 355” has been updated to refer to Commission regulations adopted pursuant to the title in which Section 355 appears. This would include regulations adopted pursuant to the second paragraph of existing Section 356 (proposed Section 29215), which also governs the take of migratory game birds.

The Commission invites comment on whether this revision is appropriate.

1 **§ 29205. License to permit feeding**

2 29205. (a) In order to aid in relieving widespread waterfowl depredation of
3 agricultural crops, the department may issue licenses under regulations which the
4 commission may adopt to permit the feeding of migratory game birds.

5 (b) The commission may prescribe an annual fee for the license.

6 **Comment.** Section 29205 continues former Fish and Game Code Section 3806 without
7 change.

8 **§ 29210. Commission regulations relating to Migratory Bird Treaty Act**

9 29210. (a) The commission may annually adopt regulations pertaining to
10 migratory birds to conform with or to further restrict the rules and regulations
11 prescribed pursuant to the Migratory Bird Treaty Act.

12 (b) Regulations adopted pursuant to this section are not subject to Sections
13 11343.4, 11346.1, 11346.4, and 11346.8 of the Government Code.

14 **Comment.** Section 29210 continues the first and second paragraphs of former Fish and Game
15 Code Section 355 without substantive change.

16 **§ 29215. Commission regulation in the absence of federal regulation**

17 29215. In the event no regulations are prescribed by the proper federal agency,
18 the commission may determine and fix the area or areas, the seasons and hours,
19 the species, the bag and possession limits, and the total number that may be taken
20 during any open season for the taking of migratory game birds, under such rules
21 and regulations as the commission may adopt. Such rules and regulations as the
22 Commission may adopt shall have the same effect as if enacted by the Legislature.

23 **Comment.** Section 29215 continues the second paragraph of former Fish and Game Code
24 Section 356 without change.

25 **Notes.** (1) The meaning of “such rules and regulations” in the last sentence of this section is
26 unclear. Does it include only those regulations adopted pursuant to existing Section 356? Or does
27 it also include regulations adopted pursuant to existing Section 355?

28 **The Commission invites comment on the issue.**

29 (2) Once the meaning of “such rules and regulations” is clarified, the reference to “rules” will
30 be deleted as redundant. The Commission sees no authority for it to adopt “rules” that are not
31 “regulations.” See also Gov’t Code § 11340.5 (barring “rules” that are not properly promulgated
32 regulations). The Commission will also delete the word “such” and replace it with suitable
33 alternatives.


34 (3) The intended effect of the last sentence of existing Section 356 is also unclear. Is the
35 provision intended to delegate lawmaking power to the Fish and Game Commission, pursuant to
36 Article 4, Section 20 of the California Constitution? That provision states that “The Legislature
37 may delegate to the commission such powers relating to the protection and propagation of fish
38 and game as the Legislature sees fit.” Given the unusual nature of this provision in Section 356,
39 and its possible validation by the California Constitution, the Commission is reluctant to disturb
40 the statutory language (except perhaps to clarify its scope).

41 **Nonetheless, comment on the meaning and effect of the provision would be helpful.**

1 **§ 29220. Effective date of regulation**

2 29220. Every regulation of the commission adopted pursuant to this title shall
3 become effective upon filing unless otherwise specified in the regulation.

4 **Comment.** Section 29220 continues the third paragraph of former Fish and Game Code
5 Section 355 without substantive change.

6  **Note.** The requirement that every regulation of the Commission adopted pursuant to the
7 article containing existing Section 355 be filed with the Secretary of State is deleted as
8 superfluous. See existing Government Code Section 11343.

9 **§ 29225. President as ex officio member of Migratory Bird Conservation Commission**

10 29225. The president of the commission may be a member ex officio of the
11 Migratory Bird Conservation Commission created by the act of Congress known
12 as the “Migratory Bird Conservation Act.”

13 **Comment.** Section 29225 continues former Fish and Game Code Section 357 without change.


14 **TITLE 2. GAME BIRDS**

15 **CHAPTER 1. GENERAL PROVISIONS**

16 **§ 29350. Use of mammal**

17 29350. It is unlawful to use any mammal (except a dog) or an imitation of a
18 mammal as a blind in approaching or taking a game bird.

19 **Comment.** Section 29350 continues former Fish and Game Code Section 3502 without
20 change.

21  **Note.** The provision above appears to govern the use of an animal (or imitation animal) as a
22 “blind” for taking game birds. The Commission is familiar with hunting blinds that are used to
23 conceal hunters and their dogs from their prey, but has not found information discussing using an
24 animal *as* a blind. Is the meaning of this usage understood in the hunting community, or is the
25 provision worded in a confusing way?

26 **The Commission invites comment on the issue.**

27 **§ 29355. Use of vehicle**

28 29355. It is unlawful to use a powerboat, motor vehicle, or airplane to drive a
29 game bird toward another person, with the intent that the other person take the
30 bird.

31 **Comment.** Section 29355 continues former Fish and Game Code Section 3501 without
32 substantive change.

33 **§ 29360. Use of dog during closed season**

34 29360. It is unlawful to break, train, hold field trials with, or practice dogs on
35 any wild game bird or domesticated game bird during the closed season for that
36 bird, except as authorized by the commission.

37 **Comment.** Section 29360 continues former Fish and Game Code Section 3508 without
38 substantive change.

Note. The terms “wild game bird” and “domesticated game bird” are not defined in the existing Fish and Game Code.

Do these two terms together comprise the entire universe of game birds, such that the language of proposed Section 29360 could be made applicable to any “game bird”?

§ 29365. Game bird club license

29365. In order to provide additional hunting by stocking domestically propagated game birds, and to permit the taking of game birds under conditions that will not conflict with the public interest, any person who owns or controls the hunting rights on a tract of land may apply to the department for a game bird club license authorizing the taking of game birds upon that land in accordance with the regulations of the commission for the administration, including the implementation and enforcement, of this section.

Comment. Section 29365 continues former Fish and Game Code Section 3270(a) without change.

Note. Existing Section 3270(b), identifying the operative date of the section as July 1, 1995, is deleted as obsolete.

§ 29370. Waste

29370. No person shall through carelessness or neglect allow any game bird that is in the person’s possession, or any portion of the flesh of a game bird usually eaten by humans, to go needlessly to waste.

Comment. Section 29370 restates the part of the first sentence of former Fish and Game Code Section 4304 applicable to game birds without substantive change.

Note. Proposed Section 29370 is intended to restate the part of the first sentence of existing Section 4304 applicable to game birds, to clarify the meaning of that provision without changing its substantive effect. The existing provision reads as follows:

“[N]or shall any person at any time leave through carelessness or neglect any game mammal or game bird which is in his possession, or any portion of the flesh thereof usually eaten by humans, to go needlessly to waste.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of these provisions.

§ 29375. Transport out of state

29375. It is unlawful to transport or carry a game bird out of this state, except by the holder of a nonresident hunting license or under a written permit issued by the department.

Comment. Section 29375 continues the part of former Fish and Game Code Section 2350 applicable to game birds without change.

CHAPTER 2. UPLAND GAME BIRDS

§ 29500. Taking

29500. It is unlawful for any person, except a person licensed pursuant to paragraph (2) of subdivision (a) of Section 10210, to take any upland game bird species without first procuring an upland game bird hunting validation, as provided in Section 28505, and having the validation permanently affixed to his or her valid hunting license.

Comment. Section 29500 continues former Fish and Game Code Section 3682.1(a) without substantive change.

§ 29505. Upland game bird validation

29505. An upland game bird hunting validation may be obtained from the department or a licensed agent authorized pursuant to Section 3200 for a fee of six dollars and twenty-five cents (\$6.25), adjusted pursuant to Section 3755.

Comment. Section 29505 continues former Fish and Game Code Section 3682.1(b) without substantive change.

§ 29510. Collectible upland game bird stamp

29510. (a) Upon full implementation of the Automated License Data System, the department shall continue to prepare, or have prepared, upland game bird stamps depicting upland game birds.

(b) Any person who obtains an upland game bird hunting validation pursuant to Section 28505 is entitled, upon request, to receive an upland game bird stamp at no additional charge.

(c) Any person may purchase an upland game bird stamp for a fee of six dollars and twenty-five cents (\$6.25), as adjusted pursuant to Section 3755.

(d) Possession of an upland game bird stamp obtained pursuant to this section does not entitle the holder to take any upland game bird species.

Comment. Section 29510 continues former Fish and Game Code Section 3682.2 without substantive change.

§ 29515. Upland Game Bird Account

29515. (a) The Upland Game Bird Account is hereby established within the Fish and Game Preservation Fund.

(b) All funds derived from the sale of upland game bird hunting validations and upland game bird stamps shall be deposited in the Upland Game Bird Account to permit separate accountability for the receipt and expenditure of these funds.

(c) The department shall maintain the internal accountability necessary to ensure compliance with the collection, deposit, and expenditure of funds specified in this section.

(d) Funds deposited in the Upland Game Bird Account shall be available for expenditure upon appropriation by the Legislature to the department.

1 (e) The department shall post budget information and a brief description on its
2 Internet Web site for all projects funded from the Upland Game Bird Account.

3 **Comment.** Subdivision (a) of Section 29515 continues former Fish and Game Code Section
4 3684(a) without change.

5 Subdivision (b) continues former Fish and Game Code Section 3684(b) without change.

6 Subdivision (c) continues former Fish and Game Code Section 3684(g) without change.

7 Subdivision (d) continues the first sentence of former Fish and Game Code Section 3684(c)
8 without change.

9 Subdivision (e) continues the second sentence of former Fish and Game Code Section 3684(e)
10 without change.

11 **§ 29520. Use of funds**

12 29520. (a) Funds deposited in the Upland Game Bird Account shall be expended
13 solely for the purpose of acquiring land, completing projects and implementing
14 programs to benefit upland game bird species, and expanding public hunting
15 opportunities and related public outreach, including, but not limited to, enhancing
16 upland game bird habitat.

17 (b) Notwithstanding subdivision (a), the department may also use funds from the
18 Upland Game Bird Account to pay for administrative and enforcement costs of the
19 programs and activities described in this section. The amount allocated from the
20 account for administrative costs shall be limited to the reasonable costs associated
21 with administration of the programs and activities described in this section.

22 (c) Projects authorized pursuant to this section are governed by **Section 1501.5**.

23 **Comment.** Subdivision (a) of Section 29520 continues the second sentence of former Fish and
24 Game Code Section 3684(c) without substantive change.

25 Subdivision (b) continues the fourth and fifth sentences of former Fish and Game Code Section
26 3684(c) without substantive change.

27 Subdivision (c) continues the first sentence of former Fish and Game Code Section 3686
28 without substantive change.

29 **§ 29525. Acquired land**

30 29525. Any land acquired with funds from the Upland Game Bird Account shall
31 be acquired in fee title or protected with a conservation easement and, to the extent
32 possible, be open or provide access to the public for upland game bird hunting.

33 **Comment.** Section 29525 continues the third sentence of former Fish and Game Code Section
34 3684(c) without change.

35 **§ 29530. Involvement with nonprofit organization**

36 29530. (a) The department may make a grant to, reimburse, or enter into a
37 contract or other agreement as defined in **subdivision (a) of Section 1571** with, a
38 nonprofit organization for the use of the funds from the Upland Game Bird
39 Account to carry out the purposes of Section 29515, 29520, 29525, 29535, or
40 29540, including related habitat conservation projects.

(b) With the approval of the entity in control of property affected by a project, the department may make a grant to, or enter into a contract with, a nonprofit organization for the accomplishment of the project.

Comment. Subdivision (a) of Section 29530 continues former Fish and Game Code Section 3684(d) without substantive change.

Subdivision (b) continues the first portion of the second sentence of former Fish and Game Code Section 3686 without substantive change.

§ 29535. Reimbursement

29535. If a project affects property, the department may reimburse the entity in control of the property for its costs of accomplishing the project.

Comment. Section 29535 restates the last clause of the second sentence of former Fish and Game Code Section 3686 without substantive change.

Note. Proposed Section 29535 is intended to restate the last clause of the second sentence of existing Section 3686 without changing its substantive effect. The part of the sentence that is restated is italicized below, and reads as follows:

“With the approval of the entity in control of property affected by a project, the department may make grants to, or enter into contracts with, nonprofit organizations for the accomplishment of those projects, *or the department may reimburse the controlling entity for its costs of accomplishing the project.*”

The Commission invites comment on whether the restatement substantively changes the italicized provision.

§ 29540. Review by advisory committee

29540. An advisory committee, as determined by the department, that includes interested nonprofit organizations that have goals and objectives directly related to the management and conservation of game bird species and primarily represent the interests of persons licensed pursuant to Section 10210 shall review and provide comments to the department on all proposed projects funded from the Upland Game Bird Account to help ensure that the requirements of this section have been met.

Comment. Section 29540 continues the first sentence of former Fish and Game Code Section 3684(e) without substantive change.

§ 29545. Non-applicability of other statutory requirements

29545. Upland game bird projects authorized pursuant to Section 29520 or 29530 are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

Comment. Section 29545 continues former Fish and Game Code Section 3684(f) without substantive change.

CHAPTER 3. RESIDENT GAME BIRDS

§ 29650. Regulations

29650. The commission may adopt regulations it deems necessary to govern the inspection of resident game birds imported into this state.

Comment. Section 29650 continues the second paragraph of former Fish and Game Code Section 3516 without substantive change.

CHAPTER 4. EXOTIC NONRESIDENT GAME BIRDS

§ 29700. Regulations

29700. The commission may adopt regulations it deems necessary to govern the release, taking, and possession of exotic nonresident game birds.

Comment. Section 29700 continues the first paragraph of former Fish and Game Code Section 3516 without substantive change.

§ 29705. Release

29705. An exotic nonresident game bird may be released in this state only on prior approval of the commission.

Comment. Section 29705 continues former Fish and Game Code Section 3515 without substantive change.

TITLE 3. NONGAME BIRDS

CHAPTER 1. GENERAL PROVISIONS [*RESERVED*]

CHAPTER 2. TAKING AND POSSESSION

§ 29850. Taking generally

29850. (a) It is unlawful to take any nongame bird except as provided in this code or in accordance with regulations of the commission or, when relating to mining operations, a mitigation plan approved by the department pursuant to Section ____.

(b) Except as provided in subdivision (d) of Section 10110, the punishment for a violation of this section is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.

Comment. Subdivision (a) of Section 29850 continues the second sentence of former Fish and Game Code Section 3800(a) without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable to former Fish and Game Code Section 3800 without substantive change.

1 **Notes.** (1) The law governing approval of a mining mitigation plan will be located in a later
2 part of the proposed Fish and Wildlife Code. When that location is determined, the cross-
3 reference in proposed Section 29850(a) will be completed.

4 (2) Existing Section 12002(c), which in part would be continued by proposed Section 7700(b),
5 provides as follows:

6 “Except as specified in Sections 12001 and 12010, the punishment for violation of Section
7 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000),
8 imprisonment in the county jail for not more than six months, or by both that fine and
9 imprisonment.”

10 However, Section 12010 addresses only the maximum punishment for a violation of existing
11 Section 3503.5 (governing the taking or possession of birds of prey). **The reference to Section**
12 **12010 has therefore been deleted from proposed Section 29850(b).**

13 **§ 29855. Taking or possession of migratory nongame bird**

14 29855. (a) It is unlawful to take or possess any migratory nongame bird as
15 designated in the Migratory Bird Treaty Act, except as provided by rules and
16 regulations adopted by the Secretary of the Interior under provisions of that act.

17 (b) Except as provided in subdivision (d) of Section 10110, the punishment for a
18 violation of this section is a fine of not more than five thousand dollars (\$5,000),
19 imprisonment in a county jail for not more than six months, or by both that fine
20 and imprisonment.

21 **Comment.** Subdivision (a) of Section 29855 continues former Fish and Game Code Section
22 3513 without substantive change.

23 Subdivision (b) continues the part of former Fish and Game Code Section 12002(c) applicable
24 to former Fish and Game Code Section 3513 without substantive change.

25 **Note.** Existing Section 12002(c), which in part would be continued by proposed Section
26 29855(b), provides as follows:

27 “Except as specified in Sections 12001 and 12010, the punishment for violation of Section
28 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000),
29 imprisonment in the county jail for not more than six months, or by both that fine and
30 imprisonment.”

31 However, Section 12010 addresses only the maximum punishment for a violation of existing
32 Section 3503.5 (governing the taking or possession of birds of prey). **The reference to Section**
33 **12010 has therefore been deleted from proposed Section 29855(b).**

34 **§ 29860. Taking of nongame birds injuring crops or property**

35 29860. (a) Nongame birds not covered by the Migratory Bird Treaty Act that are
36 found to be injuring growing crops or property may be taken by any of the
37 following:

38 (1) The owner or tenant of the premises where the crops or property are located.

39 (2) Officers or employees of the Department of Food and Agriculture or federal
40 or county officers or employees when acting in their official capacities pursuant to
41 the provisions of the Food and Agricultural Code pertaining to pests, or pursuant
42 to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4
43 of the Food and Agricultural Code.

(b) Landowners and tenants taking birds in accordance with this section are exempt from subdivision (a) of Section 9500.

Comment. Section 29860 continues former Fish and Game Code Section 3801.5 without substantive change.

CHAPTER 3. NONGAME BIRD PARTS

§ 30000. Possession of parts of nongame bird

30000. (a) Except as otherwise provided in this code or regulations adopted pursuant to this code, it is unlawful to possess the carcass, skin, or other part of any nongame bird.

(b) The feathers, carcass, skin, or part of any nongame bird possessed in violation of any provision of this code shall be seized by the department and delivered to a California Native American tribal government or a scientific or educational institution, used by the department, or destroyed.

Comment. Section 30000 continues former Fish and Game Code Section 3801.6(a) without substantive change.

§ 30005. Exception for possession of parts of nongame bird by Native American

30005. It shall be an affirmative defense to a violation of Section 30000 if the possessor of feathers, carcass, skin, or part of a nongame bird legally acquired the feathers, carcass, skin, or part, possesses them for a tribal, cultural, or spiritual purpose, and satisfies either of the following criteria:

(a) The possessor is an enrolled member of a federally recognized Native American tribe or nonfederally recognized California Native American tribe listed on the California Tribal Consultation List maintained by the Native American Heritage Commission and has, in that person's immediate possession, valid tribal identification or other irrefutable proof of current enrollment.

(b) The possessor has a certificate of degree of Indian blood issued by the United States Bureau of Indian Affairs in that person's immediate possession.

Comment. Section 30005 continues former Fish and Game Code Section 3801.6(b)(1) without substantive change.

§ 30010. Salvaging of nongame birds

30010. (a) A Native American satisfying the criteria that would constitute an affirmative defense under Section 30005 may salvage a dead nongame bird, if all of the following conditions are satisfied:

(1) The person does not possess, nor is in the company of any person who possesses, a firearm, BB device as defined in Section 16250 of the Penal Code, trap, snare, net archery equipment, device capable of discharging a projectile, or any apparatus designed to take a bird.

(2) The person was not involved in nor present at the take of the nongame bird to be salvaged, and had not received related information originating from any person present at the time of the take of the nongame bird.

(3) The nongame bird salvaged had not been struck with any thrown or discharged projectile, or trapped, netted, caught, or snared.

(b) Notwithstanding subdivision (a), an officer deputized pursuant to this code may interrupt an ongoing salvaging of a dead nongame bird carcass, feathers, skin, or part if, in the officer's judgment, the activity causes a public disruption or safety hazard, or is detrimental to the ability of the department to prevent a possible violation of this section. In that event, the officer may seize the carcass, feathers, skin, or part being salvaged, or may return the carcass, feathers, skin, or part to the general location from where it had been salvaged.

Comment. Subdivision (a) of Section 30010 restates the second, third, and fourth sentences of former Fish and Game Code Section 3801.6(b)(2) without substantive change.

Subdivision (b) restates former Fish and Game Code Section 3801.6(c) without substantive change.

Notes. (1) Proposed Section 30010(a) is intended to restate the second, third, and fourth sentences of existing Section 3801.6(b)(2) to improve their clarity, without changing their substantive effect. The existing sentences read as follows:

“Native Americans meeting the affirmative defense requirements may salvage dead nongame birds so long as the person salvaging these birds does not possess, nor is in the company of any person who possesses, a firearm, BB device as defined in Section 16250 of the Penal Code, trap, snare, net archery equipment, device capable of discharging a projectile, or any apparatus designed to take birds. Salvaging shall not take place by any person involved in the take of the nongame bird to be salvaged, any person present at the time of the take, or by any person who received related information originating from any person present at the time of the take of the nongame bird. Salvaging pursuant to this subdivision shall not take place if a bird has been struck with any thrown or discharged projectile, trapped, netted, caught, or snared.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of these sentences.

(2) Proposed Section 30010(b) is intended to restate existing Section 3801.6(c) to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“Notwithstanding subdivisions (a) and (b), any officer deputized pursuant to this code may interrupt any ongoing salvaging of dead nongame carcasses, feathers, skins, or parts if, in the officer's judgment, the activity causes a public disruption, safety hazard, or is detrimental to the ability of the department to prevent a possible violation of this section. The officer may seize any of the salvaged feathers, carcasses, skins, or parts and has the option of returning them to the general location from where they were salvaged.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

(3) Existing Section 3801.6(c) authorizes a deputized officer to interrupt specified salvaging activity “[n]otwithstanding subdivisions (a) and (b) [of Section 3801.6].” However, the only aspect of either of those subdivisions that appears to relate to salvaging activity is the portion of existing Section 3801.6(b) that would be continued by proposed Section 30010(a). Proposed Section 30010(b) would revise existing Section 3801.6(c) accordingly.

The Commission invites comment on whether that revision would cause any substantive change in the meaning of any provision.

1 **§ 30015. Sale of parts of nongame bird**

2 30015. Nothing in this chapter allows any person to sell the feathers, carcass,
3 skin, or other part of a nongame bird.

4 **Comment.** Section 30015 continues the first sentence of former Fish and Game Code Section
5 3801.6(b)(2) without substantive change.

6 **TITLE 4. BIRDS OF PREY**

7 **§ 30100. Falconry registration and licensing**

8 30100. (a) The commission may adopt regulations for the possession or training,
9 and the capture, importation, exportation, or intrastate transfer, of any bird in the
10 orders Falconiformes and Strigiformes (birds-of-prey) used in the practice of
11 falconry and may authorize the issuance and provide for the revocation of licenses
12 and permits to persons for the practice of falconry.

13 (b) It is unlawful to capture, possess, or train any bird in the orders
14 Falconiformes and Strigiformes (birds-of-prey) in the practice of falconry without
15 procuring a falconry license.

16 **Comment.** Section 30100 continues former Fish and Game Code Section 395 without change.

17 **§ 30105. Falconry license**

18 30105. (a) The falconry license shall be valid for a license year beginning on
19 July 1, and ending on the last day of June of the next succeeding calendar year. If
20 issued after July 1 of any year, a falconry license is valid for the remainder of that
21 license year.

22 (b) For the license years beginning on or after March 1, 1987, the fee for a
23 falconry license is a base fee of thirty dollars (\$30) as adjusted under Section
24 3755.

25 (c) The base year for determining the inflationary index applied to the fee
26 established by subdivision (b) shall be the 1984–85 fiscal year.

27 **Comment.** Subdivisions (a) and (b) of Section 30105 continue former Fish and Game Code
28 Section 396 without substantive change.

29 Subdivision (c) continues the first part of former Fish and Game Code Section 398 without
30 substantive change. The second part of former Fish and Game Code Section 398, which applied
31 to a code section repealed in 2007, is obsolete and is not continued.

32 **§ 30110. Taking or possession**

33 30110. (a) It is unlawful to take, possess, or destroy a bird in the order
34 Falconiformes or Strigiformes (birds-of-prey), or to take, possess, or destroy a nest
35 or egg of a bird in either of those orders, except as provided by this code or any
36 regulation adopted pursuant to this code.

37 (b) Except as provided in subdivision (d) of Section 10110, the maximum
38 punishment for each violation of this section is as follows:

(1) If the violation relates to a bird-of-prey designated as endangered, threatened, or fully protected, a fine of five thousand dollars (\$5,000), imprisonment in a county jail for a period of not to exceed one year, or both that fine and imprisonment.

(2) If the violation relates to a bird-of-prey that was taken from the wild and is subsequently reported to the department as having been bred in captivity, a fine of five thousand dollars (\$5,000), imprisonment in a county jail for a period of not to exceed one year, or both that fine and imprisonment.

(3) For all other violations of this section, a fine of not more than five thousand dollars (\$5,000), imprisonment in a county jail for a period not to exceed six months, or both that fine and imprisonment.

Comment. Subdivision (a) of Section 30110 continues former Fish and Game Code Section 3503.5 without substantive change.

Subdivision (b) combines and restates former Fish and Game Code Section 12010, and the part of former Fish and Game Code Section 12002(c) applicable to former Fish and Game Code Section 3503.5, without substantive change.

Notes. (1) Commission research indicates that the two orders identified in existing Section 3503.5 together constitute the entire universe of birds more commonly known as birds of prey.

The Commission invites comment on whether the removal of references to “bird of prey” in proposed Section 30110 substantively changes the meaning of any provision in the section.

(2) Proposed Section 30110(b) is intended to combine and restate the part of existing Section 12002(c) applicable to existing Section 3503.5, and existing Section 12010, to clarify the meaning of those provisions without changing their substantive effect. The existing provisions read as follows:

“12002. (c) Except as specified in Sections 12001 and 12010, the punishment for violation of Section 3503, 3503.5, 3513, or 3800 is a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.”

“12010. (a) Notwithstanding Section 12002, the maximum punishment for each violation of Section 3503.5 relating to a bird-of-prey designated as endangered, threatened, or fully protected is a fine of five thousand dollars (\$5,000) or imprisonment in the county jail for a period of not to exceed one year, or both the fine and imprisonment.

(b) Notwithstanding Section 12002, the maximum punishment for a violation of Section 3503.5 relating to any bird-of-prey that was taken from the wild and that is subsequently reported to the department as having been bred in captivity is a fine of five thousand dollars (\$5,000) or imprisonment in the county jail for a period of not to exceed one year, or both the fine and imprisonment.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

§ 30115. Cooperative contracts with the United States Fish and Wildlife Service

30115. The department may enter into cooperative contracts with the United States Fish and Wildlife Service in the Department of the Interior for the purpose of controlling or eradicating any predatory bird, and may expend any money made available to the department for that purpose.

Comment. Section 30115 restates former Fish and Game Code Section 3802 without substantive change.

Note. Proposed Section 30115 is intended to restate existing Fish and Game Code Section 3802 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“3802. The department may enter into cooperative contracts with the United States Fish and Wildlife Service in the Department of the Interior in relation to the control or eradication of predatory birds, and for that purpose may expend any money made available to the department for expenditure for the control or eradication of predatory birds.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provisions.

TITLE 5. FULLY PROTECTED BIRDS

§ 30200. Take or possession prohibited

30200. Except as provided in **Section 2081.7, 2835**, or this title:

(a) A fully protected bird may not be taken or possessed at any time.

(b) No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected bird, and no issued permit or license shall be construed to authorize the taking of a fully protected bird.

(c) Except as otherwise provided in Section 597 of the Penal Code, the punishment for a violation of this section is a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

(d) The judge before whom any person is tried for a violation of this section may, in the court’s discretion and upon the conviction of that person, order the forfeiture of any proceeds resulting from the taking of the fully protected bird.

Comment. Subdivisions (a) and (b) of Section 30200 continue the first two sentences of former Fish and Game Code Section 3511(a)(1) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 12008(b) without substantive change.

Subdivision (d) continues the part of former Fish and Game Code Section 12159.5 applicable to fully protected birds without substantive change.

§ 30205. Department research

30205. (a) The department may authorize the taking of a fully protected bird for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, and may authorize the live capture and relocation of a fully protected bird pursuant to a permit for the protection of livestock.

(b) Before authorizing the take of a fully protected bird, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization.

(c) The notice shall be published in the California Regulatory Notice Register and shall be delivered to each person who has given the department written notice

1 of that person's interest in fully protected species and provided the department
2 either an e-mail or postal address.

3 (d) Affected and interested parties shall have 30 days after the notice is
4 published in the California Regulatory Notice Register to provide any relevant
5 information and comments on the proposed authorization.

6 (e) As used in this subdivision, "scientific research" does not include an action
7 taken as part of specified mitigation for a project, as defined in Section 21065 of
8 the Public Resources Code.

9 **Comment.** Section 30205 continues the third through the sixth sentences of former Fish and
10 Game Code Section 3511(a)(1), and former Fish and Game Code Section 3511(a)(2), without
11 substantive change.

12 **Note.** The term "project" is defined, for purposes of the entire Fish and Game Code, by
13 existing Section 711.2(a), as having "the same meaning as defined in Section 21065 of the Public
14 Resources Code." In the proposed law, that definitional provision will be added to the list of
15 generally applicable definitional provisions in Division 1 (but has not as yet been assigned a
16 section number).

17 **The Commission invites comment on whether or not that generally applicable definitional**
18 **provision should be cross-referenced in proposed Section 30205.**

19 **§ 30210. Possession of legally imported fully protected birds**

20 30210. A legally imported fully protected bird may be possessed under a permit
21 issued by the department.

22 **Comment.** Section 30210 continues former Fish and Game Code Section 3511(a)(3) without
23 change.

24 **PART 3. SPECIFIC TYPES OF BIRDS**

25 **TITLE 1. BIRD OF PARADISE**

26 **§ 30300. Prohibited take, sale, or purchase**

27 30300. It is unlawful to take, sell, or purchase a bird of paradise.

28 **Comment.** Section 30300 continues the part of former Fish and Game Code Section 3505
29 applicable to birds of paradise without substantive change.

30 **TITLE 2. CONDORS**

31 **§ 30350. Fully protected bird**

32 30350. For the purposes of this code, a California condor is a fully protected
33 bird.

34 **Comment.** Section 30350 continues former Fish and Game Code Section 3511(b)(5) without
35 change.

1 **§ 30355. Provisions not exclusive**

2 30355. The provisions of this title are not intended to be exclusive. Other
3 provisions that govern condor include, but are not limited to, the following
4 provisions:

5 (a) **Section 2720.**

6 (b) Section 10000.

7 (c) Section 10005.

8 (d) Section 10010.

9 (e) Section 10015.

10 (f) Section 10020.

11 (g) Section 10025.

12 (h) Section 10030.

13 **Comment.** Section 30355 is new. It is added for drafting convenience.

14 **§ 30360. California condor preservation project**

15 30360. The department may carry out a California condor preservation project
16 which has the following objectives:

17 (a) Habitat protection, consistent with the department's existing legal authority.

18 (b) Field research, including mortality studies.

19 (c) Captive breeding program.

20 (d) Condor release program.

21 **Comment.** Section 30360 continues former Fish and Game Code Section 3850 without
22 change.

23 **§ 30365. Joint planning with federal authorities**

24 30365. The department, jointly with the federal-state condor recovery team
25 established pursuant to the federal Endangered Species Act shall develop a plan to
26 respond to the objectives in Section 30360. Based on the plan, the department
27 shall develop specific activities, studies, and programs to be administered by the
28 department in the areas of habitat protection and field research. The department
29 may contract for all or some of these activities, studies, and programs.

30 **Comment.** Section 30365 continues former Fish and Game Code Section 3851 without
31 substantive change.

32 **§ 30370. Breeding program**

33 30370. The department shall provide funds to the Zoological Society of San
34 Diego and to the Los Angeles Zoo for a condor breeding program on the grounds
35 of each zoo.

36 **Comment.** Section 30370 continues former Fish and Game Code Section 3852 without
37 change.

1 **§ 30375. Release program**

2 30375. In addition to the programs in Section 30370, a condor release program
3 administered by the department and the United States Fish and Wildlife Service
4 may be contracted to the Zoological Society of San Diego and the Los Angeles
5 Zoo.

6 **Comment.** Section 30375 continues former Fish and Game Code Section 3853 without
7 substantive change.

8 **§ 30380. Use of funds for administrative costs**

9 30380. Not more than 10 percent of the funds provided to the zoos under this
10 title may be used for administrative costs of the program.

11 **Comment.** Section 30380 continues former Fish and Game Code Section 3854 without
12 substantive change.

13 **§ 30385. Monitoring of programs**

14 30385. Both the breeding program and the release program, if authorized by the
15 department, shall meet criteria established by the department and shall be
16 monitored by the department. The zoos shall submit biannual reports to the
17 department that describe progress made in the breeding program and the release
18 program.

19 **Comment.** Section 30385 continues former Fish and Game Code Section 3855 without
20 change.

21 **§ 30390. Report to Legislature**

22 30390. The department shall include copies of the biannual reports from the
23 zoos in the annual report to the Legislature on the status of listed species required
24 in **Section 2079**.

25 **Comment.** Section 30390 continues former Fish and Game Code Section 3856 without
26 substantive change.

27 **§ 30395. Department to seek funding**

28 30395. To the extent possible, the department shall seek private sector funding
29 and any federal funds that may be available to augment state funds for the
30 purposes of this title.

31 **Comment.** Section 30395 continues former Fish and Game Code Section 3857 without
32 substantive change.

33 **TITLE 3. DUCK AND GOOSE**

34 **§ 30500. Classification**

35 30500. For the purposes of this code, a duck and a goose are both migratory
36 birds and game birds.

37 **Comment.** Section 30500 continues former Fish and Game Code Section 3500(b)(1) without
38 substantive change.

1 **§ 30505. Required validation**

2 30505. (a) It is unlawful for any person, except a person licensed pursuant to
3 paragraph (2) of subdivision (a) of Section 10210, to take a duck or goose without
4 obtaining and possessing at the time of taking a state duck hunting validation as
5 provided in Section 30515.

6 (b) In addition to any other penalty or fine imposed pursuant to this code, if a
7 person is convicted of a violation of this section, and was previously convicted of
8 one or more offenses related to a taking in violation of this section, Section 9500,
9 Section 33205, Section 34200, or former Fish and Game Code Section 3700, or
10 related to the sale or purchase of a part of a bear in violation of Section 33455,
11 separate from the offense before the court, the court may order as a condition of
12 probation that the person attend the hunter education course designated in Section
13 10405 and perform community service, preferably relating to natural resources if
14 that type of community service is available, as follows:

15 (1) If the person has one separate conviction, not more than 200 hours of
16 community service.

17 (2) If the person has two or more separate convictions, not more than 300 hours
18 of community service.

19 **Comment.** Subdivision (a) of Section 30505 continues former Fish and Game Code Sections
20 3700.1(a) without substantive change.

21 Subdivision (b) makes former Fish and Game Code Section 12001.5 applicable to a violation
22 of former Fish and Game Code Section 3700.1, correcting an apparent drafting error.

23 **Notes.** (1) Existing Section 3700.1 applies to the taking of “any migratory game bird, except
24 jacksnipe, coots, gallinules, western mourning doves, white-winged doves, and band-tailed
25 pigeons.” Existing Section 3500(b) identifies the birds that constitute “migratory game birds,”
26 and excepting the birds listed in Section 3700.1, the only remaining migratory game birds are
27 ducks and geese. Based on this authority, the application of proposed Section 30505 has been
28 simplified to apply only to the taking of ducks and geese.

29 **The Commission invites comment on whether this simplification is appropriate.**

30 (2) Existing Section 12001.5 (which would be continued in part by proposed Section 30505(b))
31 reads as follows:

32 “12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person
33 has been convicted of one or more offenses that was a violation of a section listed in subdivision
34 (b) separate from the offense before the court, the court may order as a condition of probation
35 upon conviction of the offense before the court that is also a violation of a section listed in
36 subdivision (b), that the person attend the hunter education course designated in Section 3051 and
37 perform community service, preferably relating to natural resources if that type of community
38 service is available, as follows:

39 (1) If the person has one separate conviction, not more than 200 hours of community service.

40 (2) If the person has two or more separate convictions, not more than 300 hours of community
41 service.

42 (b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and
43 4750, and a sale or purchase of parts of a bear in Section 4758.”

44 As indicated, Section 12001.5(b) expressly applies to a violation of several identified sections,
45 including “Section 3700,” a section that at the time Section 12001.5 was enacted generally
46 prohibited the taking of a migratory game bird without possessing a required state duck *stamp*

(the only form of special permission that at that time authorized the take of migratory game birds).

Subsequent to the enactment of Section 12001.5, the Department began alternatively authorizing the take of migratory game birds with an electronic validation, issued through the Department's new Automated License Data System (ALDS). Thereafter, Section 3700.1, which mirrored the language of Section 3700 except to apply to the taking of a migratory game bird without possessing that validation, was added to the existing code. See 2001 Cal. Stat. ch. 112. However, notwithstanding the similarity of the language and apparent intent of the two sections relating to the take of migratory game birds, a concurrent amendment was never made to Section 12001.5 to provide for application of that section to a violation of Section 3700.1.

The Commission believes this failure to amend Section 12001.5 was an inadvertent drafting error. Further, as Section 3700 was repealed in 2015 based on the discontinued use of duck stamps for hunting purposes (see 2015 Cal. Stat. ch. 683), Section 12001.5 now has *no* application to an unauthorized take of migratory game birds, on or after January 1, 2016. As the Commission believes this result would be contrary to what was intended by the Legislature, the provisions of the proposed law that continue existing Section 12001.5 would also apply to a violation of Section 3700.1.

The Commission invites comment on whether that application is appropriate.

§ 30510. Taking in District 2580 or 2585

30510. (a) In Districts 2580 and 2585, it is unlawful to take a duck or a goose below the incoming or outgoing tidewater's edge, or from any blind, boat, floating device, island, islet, or exposed tidal flat, except as provided in subdivision (b).

(b) Subdivision (a) does not apply to either of the following:

(1) The taking of a duck or goose on a Saturday, Sunday, Wednesday, holiday, or the opening or closing days of the prescribed open season.

(2) The retrieving of a crippled or dead duck or goose by use of a boat.

Comment. Section 30510 restates former Fish and Game Code Section 3681 without substantive change.

Note. Proposed Section 30510 is intended to restate existing Section 3681 to improve its clarity, without changing its substantive effect. The existing section reads as follows:

"3681. In Districts 8 and 9, it is unlawful to take ducks or geese in any manner below the incoming or outgoing tidewater's edge or from any blind, boat, floating device, island, islet, or exposed tidal flat except on Saturdays, Sundays, Wednesdays, holidays and the opening and closing days during the prescribed open season except that the use of boats is permitted to retrieve crippled or dead birds."

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

§ 30515. State duck hunting validation

30515. A state duck hunting validation shall be sold for a fee of ten dollars (\$10) by the department and by license agents, who are authorized by the department pursuant to Section 3200, in the same manner as hunting licenses.

Comment. Section 30515 continues former Fish and Game Code Section 3700.1(b) without substantive change.

1 **§ 30520. Collectible state duck stamp**

2 30520. (a) Upon full implementation of the Automated License Data System,
3 the department shall continue to prepare, or have prepared, state duck stamps
4 depicting migratory waterfowl.

5 (b) Any person who obtains a duck hunting validation pursuant to Section 30515
6 is entitled, upon request, to receive a state duck stamp, open edition, at no
7 additional charge.

8 (c) Any person may purchase a state duck stamp, open edition, for a fee of ten
9 dollars (\$10).

10 (d) A state duck stamp, Governor's edition, may be printed and sold on a bid
11 basis, beginning at a minimum bid, as determined by the department or its
12 representative.

13 (e) The commission shall determine the form of the state duck stamp.

14 (f) Possession of a state duck stamp obtained pursuant to this section does not
15 entitle the holder to take a duck or goose.

16 **Comment.** Section 30520 continues former Fish and Game Code Section 3700.2(a)-(f) without
17 substantive change.


18 **§ 30525. Promotional material**

19 30525. (a) The department may prepare and sell artwork, posters, and other
20 promotional materials related to the sale of duck stamps or waterfowl hunting and
21 conservation.

22 (b) The department may permit individual artists to sell a limited number of
23 prints of duck stamp related artwork or posters.

24 **Comment.** Subdivision (a) of Section 30525 continues former Fish and Game Code Section
25 3700.2(g) without change.

26 Subdivision (b) continues the first paragraph of former Fish and Game Code Section 3702.5
27 without change.

28  **Note.** The second sentence of existing Section 3702.5, identifying the operative date of that
29 section as July 1, 1993, is deleted as obsolete.

30 **§ 30530. State Duck Stamp Account**

31 30530. All funds derived from the sale of state duck hunting validations, state
32 duck stamps, and related items authorized by subdivision (a) of Section 30525
33 shall be deposited in the State Duck Stamp Account in the Fish and Game
34 Preservation Fund to permit separate accountability for the receipt and expenditure
35 of these funds.

36 **Comment.** Section 30530 continues the first sentence of former Fish and Game Code Section
37 3701 without substantive change.

38 **§ 30535. Allocation of funds in State Duck Stamp Account**

39 30535. Funds deposited in the State Duck Stamp Account shall be allocated as
40 follows:

(a) An amount not to exceed 6 percent of the amount annually deposited in the account may be used for administrative overhead related to the use of those funds and for implementation of the federal Migratory Bird Harvest Program.

(b) Two dollars and twenty-five cents (\$2.25) of the amount collected by the department for each state duck stamp or state duck validation sold shall be allocated by the commission for the purposes of the North American Waterfowl Management Plan, in those areas of Canada from which substantial numbers of waterfowl migrate to or through California. These funds shall be matched with federal or private funds available for that purpose.

(c) The available balance of the funds shall be used for any project authorized pursuant to Section 30540, 30550, or 30555 in California.

Comment. Subdivision (a) of Section 30535 continues the second sentence of former Fish and Game Code Section 3701 without substantive change.

Subdivision (b) continues the first and second sentences of the first paragraph of former Fish and Game Code Section 3704 without substantive change, except the provision is made applicable to the sale of state duck validations as well as the sale of state duck stamps.

Subdivision (c) continues the third sentence of the first paragraph of former Fish and Game Code Section 3704 without substantive change.

Notes. (1) When existing Section 3704 was enacted in 1992, authority to hunt ducks and geese was provided solely through the issuance of duck stamps. However, beginning in 2001 this authority also became available through the sale of electronic duck “validations,” and it is the Commission’s understanding that these validations have largely or entirely replaced the use of stamps. In order to reflect that administrative change, the reference to revenue from duck stamp sales was generalized, in proposed Section 30535(b), to include revenue from validation sales.

The Commission invites comment on whether this would cause any problems.

(2) Existing Section 3704 includes a sentence restricting the use of “the available balance of the funds” to specified projects in California. Because that sentence is in a section that discusses the funds from duck stamp sales specifically, it is not entirely clear that the reference includes *all* funds in the Duck Stamp Account (which includes revenue from art sales and the sale of validations). Proposed Section 30535 is drafted so as to eliminate that ambiguity (i.e., the provision would govern all funds in the account).

The Commission invites comment on whether this would cause any problems.

(3) The second paragraph of existing Section 3704, identifying the operative date of that section as July 1, 1993, is deleted as obsolete.

§ 30540. Use of funds

30540. Funds deposited in the State Duck Stamp Account shall be used for projects or endowments approved by the commission for the purpose of protecting, preserving, restoring, enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating habitat projects, and conducting waterfowl resource assessments and other waterfowl related research.

Comment. Section 30540 continues the first sentence of former Fish and Game Code Section 3702 without change.

1 **§ 30545. Acquired lands**

2 30545. Any land acquired in California with funds deposited in the State Duck
3 Stamp Account shall be open to waterfowl hunting as a public shooting ground or
4 wildlife management area.

5 **Comment.** Section 30545 continues the last sentence of the first paragraph of former Fish and
6 Game Code Section 3704 without substantive change.

7 **§ 30550. Grant to or contract with nonprofit organization**

8 30550. The department may make a grant to or enter into a contract with a
9 nonprofit organization for the use of funds deposited in the State Duck Stamp
10 Account, if both of the following conditions are satisfied:

11 (a) The department finds that the grant or contract is necessary for carrying out
12 the purposes of this chapter.

13 (b) The entity in control of any property affected by a project approves the grant
14 or contract.

15 **Comment.** Section 30550 combines and restates the third sentence of the first paragraph of
16 former Fish and Game Code Section 3702, and a portion of the second sentence of former Fish
17 and Game Code Section 3704.5, without substantive change.

18 **Note.** Proposed Section 30550 is intended to combine and restate the third sentence of
19 existing Section 3702, and a portion of the second sentence of existing Section 3704.5, both of
20 which authorize the Department to make specified uses of funds in the State Duck Stamp
21 Account, without changing their substantive effect.

22 The restated sentences, in their existing sections, are shown in italics below:

23 “3702. Funds deposited in the State Duck Stamp Account shall be used for projects or
24 endowments approved by the commission for the purpose of protecting, preserving, restoring,
25 enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating
26 habitat projects, and conducting waterfowl resource assessments and other waterfowl related
27 research. These funds may be used to reimburse nonprofit organizations for completed habitat
28 projects. *Subject to Section 3704, the department may make grants or enter into contracts with*
29 *nonprofit organizations for the use of these funds when it finds that the contracts are necessary*
30 *for carrying out the purposes of this article.”*

31 “3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are not subject to
32 Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6
33 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.
34 *With the approval of the entity in control of property affected by a project, the department may*
35 *make grants to, or enter into contracts with, nonprofit organizations for the accomplishment of*
36 *those projects, or the department may reimburse the controlling entity for its costs of*
37 *accomplishing the project.”*

38 **The Commission invites comment on whether the restatement substantively changes**
39 **either of the italicized provisions.**

40 **§ 30555. Reimbursement**

41 30555. The department may use funds deposited in the State Duck Stamp
42 Account for reimbursement in either of the following circumstances:

43 (a) To reimburse a nonprofit organization for a completed habitat project.

44 (b) To reimburse the entity in control of property affected by a project, for its
45 costs of accomplishing the project.

1 **Comment.** Section 30555 combines and restates the second sentence of the first paragraph of
2 former Fish and Game Code Section 3702, and a portion of the second sentence of former Fish
3 and Game Code Section 3704.5, without substantive change.

4 **Note.** Proposed Section 30555 is intended to combine and restate the third sentence of
5 existing Section 3702, and the second sentence of existing Section 3704.5, both of which
6 authorize the Department to make specified uses of funds in the State Duck Stamp Account,
7 without changing their substantive effect.

8 The sentences in the existing sections are italicized below, and read as follows:

9 “3702. Funds deposited in the State Duck Stamp Account shall be used for projects or
10 endowments approved by the commission for the purpose of protecting, preserving, restoring,
11 enhancing, and developing migratory waterfowl breeding and wintering habitat, evaluating
12 habitat projects, and conducting waterfowl resource assessments and other waterfowl related
13 research. *These funds may be used to reimburse nonprofit organizations for completed habitat*
14 *projects.*”

15 “3704.5. Waterfowl projects authorized pursuant to Sections 3702 and 3460 are not subject to
16 Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6
17 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.
18 With the approval of the entity in control of property affected by a project, the department may
19 make grants to, or enter into contracts with, nonprofit organizations for the accomplishment of
20 those projects, or *the department may reimburse the controlling entity for its costs of*
21 *accomplishing the project.*”

22 **The Commission invites comment on whether the restatement substantively changes any**
23 **aspect of either of the italicized provisions.**

24 **§ 30560. Project prerequisites**

25 30560. (a) Before the commission may consider any project that proposes the
26 use of funds from the State Duck Stamp Account, the department shall analyze the
27 project and provide the commission with recommendations as to the project’s
28 feasibility and need.

29 (b) Before allocating funds to any project to be undertaken outside the state, or
30 outside the United States, the commission shall secure evidence that the project is
31 acceptable to the government agency having jurisdiction over the lands and waters
32 affected by the project.

33 **Comment.** Subdivision (a) of Section 30560 continues former Fish and Game Code Section
34 3703 without substantive change.

35 Subdivision (b) continues former Fish and Game Code Section 3705 without substantive
36 change.

37 **§ 30565. Advisory committee**

38 30565. An advisory committee, as determined by the department, that includes
39 interested nonprofit organizations that have goals and objectives directly related to
40 the management and conservation of waterfowl species and primarily represent the
41 interests of persons licensed pursuant to Section 10210 shall review and provide
42 comments to the department on all proposed projects funded from the State Duck
43 Stamp Account to help ensure that the requirements of subdivisions (b) and (c) of
44 Section 30535, Sections 30540, 30545, 30550, and 30555, and subdivision (a) of
45 30560 have been met.

Comment. Section 30565 continues former Fish and Game Code Section 3702.1 without substantive change.

§ 30570. Non-applicability of other statutory requirements

30570. Waterfowl projects authorized pursuant to **Section** 30540, 30550 or **3460** are not subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

Comment. Section 30570 continues the part of the first sentence of the first paragraph of former Fish and Game Code Section 3704.5 applicable to former Fish and Game Code Section 3702 without substantive change.

Notes. (1) The first sentence of existing Section 3704.5 refers to two types of projects — those authorized under this article and those authorized under existing Section 3460 (the California Waterfowl Habitat Program). The latter reference was not continued in proposed Section 30470, because Section 3460 does not directly relate to hunting. The Commission intends to continue Section 3460 elsewhere in the code (probably with other provisions governing habitat conservation programs). A provision equivalent to proposed Section 30470, but applicable to existing Section 3460, will be added at that time.

(2) The second paragraph of existing Section 3704.5, identifying the operative date of the section as July 1, 1993, is deleted as obsolete.

TITLE 4. EGRET

§ 30700. Prohibited take, sale, or purchase

30700. It is unlawful to take, sell, or purchase an aigrette or egret.

Comment. Section 30700 continues the part of former Fish and Game Code Section 3505 applicable to egrets without substantive change.

TITLE 5. GOURA

§ 30750. Prohibited take, sale, or purchase

30750. It is unlawful to take, sell, or purchase a goura.

Comment. Section 30750 continues the part of former Fish and Game Code Section 3505 applicable to gouras without substantive change.

TITLE 6. NUMIDI

§ 30800. Prohibited take, sale, or purchase

30800. It is unlawful to take, sell, or purchase a numidi.

Comment. Section 30800 continues the part of former Fish and Game Code Section 3505 applicable to numidi without substantive change.

1 TITLE 6. OSPREY

2 § 30850. Prohibited take, sale, or purchase

3 30850. It is unlawful to take, sell, or purchase an osprey.

4 **Comment.** Section 30850 continues the part of former Fish and Game Code Section 3505
5 applicable to ospreys without substantive change.

6 TITLE 7. PHEASANT

7 § 30900. Classification

8 30900. For the purposes of this code, a ring-necked pheasant, and varieties
9 thereof, are both resident game birds and upland game birds.

10 **Comment.** Section 30900 combines and continues former Fish and Game Code Sections
11 3500(a)(10) and 3683(a)(11) without substantive change.

12 § 30905. Provisions not exclusive

13 30905. The provisions of this title are not intended to be exclusive. Other
14 provisions that govern pheasants include, but are not limited to, the following
15 provisions:

16 (a) Section 370.

17 (b) Section 775.

18 (c) Section 10210.

19 (d) Section 26000.

20 (e) Section 26010.

21 (f) Section 26070.

22 **Comment.** Section 30905 is new. It is added for drafting convenience.

23 § 30910. Prohibited take

24 30910. (a) It is unlawful to take a pheasant within 300 yards of a vehicle from
25 which pheasants are being released into an area for hunting, while the pheasants
26 are being released.

27 (b) It is unlawful to possess a pheasant carcass in a condition that the sex or
28 species of the pheasant cannot be easily determined, while in the field or forest or
29 while upon any highway, train, car, boat, or other conveyance when returning
30 from any hunting trip with gun or other hunting equipment.

31 **Comment.** Subdivision (a) of Section 30910 continues former Fish and Game Code Section
32 3010 without substantive change.

33 Subdivision (b) continues former Fish and Game Code Section 3660 without substantive
34 change.

TITLE 8. PIGEON

§ 31000. Classification

31000. For the purposes of this code, a band-tailed pigeon is both a migratory game bird and an upland game bird.

Comment. Section 31000 combines and continues former Fish and Game Code Sections 3500(b)(6), and 3683(b)(4), without substantive change.

§ 31005. Provisions not exclusive

31005. The provisions of this title are not intended to be exclusive. Other provisions that govern pigeons include, but are not limited to, Section 545.

Comment. Section 31005 is new. It is added for drafting convenience.

§ 31010. Racing pigeon

31010. (a) Except as provided in subdivision (b), any person who purposely takes any racing pigeon that at the time of taking is registered with a recognized organization is guilty of a misdemeanor.

(b) This section does not apply to either of the following:

(1) The taking of a registered racing pigeon by its owner.

(2) The incidental take of a registered racing pigeon while shooting or taking a wild band-tailed or domestic pigeon (*Columba livia*).

Comment. Section 31010 restates former Fish and Game Code Section 3680 without substantive change.

Note. Proposed Section 31010 is intended to restate existing Section 3680 to improve its clarity, without changing its substantive effect. The existing section reads as follows:

“3680. Any person, other than the owner thereof, who at any time, by any means or in any manner, purposely takes any racing pigeon currently registered with a recognized organization, is guilty of a misdemeanor. However, the incidental take of registered racing pigeons with the shooting or taking of wild band-tailed pigeons or domestic pigeons (*Columba livia*), is not a violation of this section.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

TITLE 9. SPARROW AND STARLING

§ 31050. Authorized take or possession

31050. (a) Except as provided in Section 9590 and this section, the following nongame birds may be taken or possessed at any time:

(1) English sparrow (*Passer domesticus*).

(2) Starling (*Sturnus vulgaris*).

(b) Notwithstanding Section 9500 or any other provision of this code or regulation adopted pursuant to this code requiring the possession of a hunting license, a landowner or lessee, or an agent of either in immediate possession of

written authority from the landowner or lessee, shall not be required to obtain a hunting license or a depredation permit to take a nongame bird listed in subdivision (a) on land owned or leased by the landowner or lessee.

(c) All other persons taking a nongame bird listed in subdivision (a) shall be licensed pursuant to Section 9500.

Comment. Section 31050 restates former Fish and Game Code Section 3801 without substantive change.

Notes: (1) Proposed Section 31050 is intended to restate existing Section 3801 to improve its clarity, without changing its substantive effect. The existing section reads as follows:

“3801. Notwithstanding Section 3007 or any other provision of this code or regulations made pursuant thereto requiring the possession of a hunting license, a landowner or lessee or agent of either in immediate possession of written authority from the landowner or lessee, shall not be required to obtain a hunting license or a depredation permit to take the following nongame birds on land owned or leased by the landowner or lessee. Hunters otherwise taking the following nongame birds shall be licensed pursuant to Section 3007. The following nongame birds taken in compliance with this section may be taken and possessed by any person at any time, except as provided in Section 3000:

- (a) English sparrows (*Passer domesticus*).
- (b) Starlings (*Sturnus vulgaris*).”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 3801 was amended in 2007 to add most of the above language relating to licensure. 2007 Cal. Stat. ch. 285. Previously, the section had read:

“3801. Unless otherwise provided by the regulations of the commission the following nongame birds may be taken and possessed by any person at any time, except as provided in Section 3000:

- (a) English sparrows (*Passer domesticus*).
- (b) Starlings (*Sturnus vulgaris*).”

The 2007 amendment to the section deleted the language authorizing the Commission to regulate the taking of sparrows and starlings. That deletion may have had an inadvertent effect, by removing statutory authority for existing Commission regulations that govern the *manner* in which sparrows and starlings may be taken. See 14 CFR 472(a); 14 CFR 475.

The Commission invites comment on whether the introductory clause of proposed Section 31050(a) should be revised to read: “Except as provided in Section 9590 and this section, the following nongame birds may be taken or possessed at any time, subject to any regulation adopted by the Commission that governs the manner of that taking:”

TITLE 10. WILD TURKEY

§ 31100. Classification

31100. For the purposes of this code, a wild turkey of the order Galliformes is both a resident game bird and an upland game bird.

Comment. Section 31100 continues former Fish and Game Code Sections 3500(a)(11) and 3683(a)(12) without substantive change.

§ 31105. Trophy wild turkeys

31105. (a) Notwithstanding Section 4400 or 8400, the punishment for any person who knowingly violated and has been convicted of any of the following

1 provisions where the violation involved a trophy wild turkey shall be a fine of not
2 less than two thousand dollars (\$2,000), nor more than five thousand dollars
3 (\$5,000), or imprisonment in a county jail for not more than one year, or both that
4 fine and imprisonment:

5 (1) Section 8015, if the person took a wild turkey outside the established season.

6 (2) Section 8125.

7 (3) Section 29370.

8 (4) Section 257.5 of Title 14 of the California Code of Regulations.

9 (b) The commission shall adopt regulations to implement this section, including
10 establishing a trophy designation and monetary value based on the size or related
11 characteristics of wild turkeys.

12 (c) All revenue from fines imposed pursuant to this section shall be deposited in
13 the Upland Game Bird Account established in Section 29515 and shall be used for
14 the upland game bird conservation purposes described in that section.

15 (e) Moneys equivalent to 50 percent of the revenue from any fine collected
16 pursuant to this section shall be paid to the county in which the offense was
17 committed, pursuant to Section 3610. The county board of supervisors shall first
18 use revenues pursuant to this subdivision to reimburse the costs incurred by the
19 district attorney or city attorney in investigating and prosecuting the violation. Any
20 excess revenues may be expended in accordance with Section 3915.

21 **Comment.** Section 31105 continues the part of former Fish and Game Code Section 12013.3
22 applicable to wild turkeys without substantive change.

23 **§ 31110. Depredation permit for wild turkeys**

24 31110. (a) An owner or tenant of land or property that is being damaged or
25 destroyed, or is in danger of being damaged or destroyed, by wild turkey, may
26 apply to the department for a permit to kill the wild turkey causing or threatening
27 the damage or destruction.

28 (b) The department, upon satisfactory evidence of actual or immediately
29 threatened damage or destruction of land or property, shall issue a revocable
30 permit for the taking and disposition of the responsible wild turkey, under
31 regulations adopted by the commission. The permit shall include a statement of
32 the penalties that may be imposed for a violation of the permit conditions.

33 (c) Wild turkey taken under a permit issued pursuant to subdivision (b) shall not
34 be sold or shipped from the premises on which they are taken, except pursuant to
35 instructions from the department.

36 (d) No poison of any type may be used to take any wild turkey pursuant to this
37 section.

38 (e) It is unlawful for any person to violate the terms of any permit issued
39 pursuant to this section.

40 **Comment.** Section 31110 restates the part of former Fish and Game Code Section 4181
41 applicable to wild turkeys without substantive change.

Note. Proposed Section 31110 is intended to restate the part of existing Fish and Game Code Section 4181 applicable to wild turkey to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b)....”

The references in existing Section 4181 to existing Section 4181.1 and to subdivisions (b) and (d) of Section 4181 have not been continued in proposed Section 31110, as those provisions do not apply to turkeys.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 31115. Access by licensed hunters for depredator control of wild turkeys

31115. (a) If a landowner or tenant applies for a permit under Section 31110 to take wild turkey, the department shall inform the applicant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to **Article 3 (commencing with Section 1570) of Chapter 5 of Division 2** to control wild turkey.

(b) The commission, in lieu of a permit described in Section 31110, and with the consent of, or upon the request of, the landowner or tenant, may pursuant to appropriate regulation authorize the issuance of permits to persons holding valid hunting licenses to take wild turkey in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

Comment. Section 31115 restates the part of former Fish and Game Code Section 4188 applicable to wild turkey without substantive change.

Note. Proposed Section 31015 is intended to restate the part of existing Fish and Game Code Section 4188 applicable to wild turkey to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited

to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

(b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

DIVISION 9. MAMMALS

PART 1. GENERAL PROVISIONS

TITLE 1. APPLICATION OF OTHER PROVISIONS

§ 31400. Governance by other provisions

31400. Animals governed by this division are also governed by other provisions of this code, including but not limited to Divisions 6 (commencing with Section 8000) and 7 (commencing with Section 23300).

Comment. Section 31400 is new. It is added for drafting convenience.

TITLE 2. DOGS PURSUING OR INJURING MAMMALS

CHAPTER 1. GENERAL PROVISIONS

§ 31500. Definitions

31500. For the purposes of this title:

(a) “Pursue” means pursue, run, or chase.

(b) “Bear” means any black bear (*Ursus americanus*) found in the wild in this state.

Comment. Section 31500 merges and restates former Fish and Game Code Sections 3032(a)(1), 3960(a), 3960.2(a), 3960.4(a), and 3960.6(a) without substantive change.

Notes. (1) Proposed Section 31500 is intended to merge and restate existing Fish and Game Code Sections 3032(a)(1), 3960(a), 3960.2(a), 3960.4(a), and 3960.6(a) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“3032. (a) As used in this section:

(1) “Pursue” means pursue, run, or chase.

(2) “Bear” means any black bear (*Ursus americanus*) found in the wild in this state.”

...

3960. (a) As used in this section:

(1) "Pursue" means pursue, run, or chase.

(2) "Bear" means any black bear (*Ursus americanus*) found in the wild in this state."

3960.2. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

3960.4. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

3960.6. (a) As used in this section, the terms "bear" and "pursue" have the same meanings as defined in Section 3960."

The Commission invites comment on whether the proposed merger and restatement would cause any substantive change in the meaning of any of the provisions.

(2) In the existing Fish and Game Code, the two definitions in proposed Section 31500 are limited in their applicability to the sections in this proposed title. Nevertheless, that limitation may either have been unintentional, or has been overlooked in the enactment of other provisions making use of either of the two terms.

The Commission invites comment on whether either of the definitions in proposed Section 31400 should be generalized to apply to the entire code, and relocated in the proposed law among other code-wide definitions.

§ 31505. Hound tag program

31505. (a) As used in this section, "hound" means a dog used to pursue mammals.

(b) The commission may establish a hound tag program.

(c) If a hound tag program is established, the commission may require all of the following:

(1) That each hound be issued a license tag bearing a unique identifying number that is to be worn at all times by the hound while pursuing mammals.

(2) That all relevant local and state laws pertaining to dogs are being followed while the hound is being used to pursue mammals.

(3) That each hound be microchipped with an implanted transponder that has a unique identification code.

(4) That the owner maintain documentation showing that the hound is current on all required vaccinations and treatments for the prevention of rabies and any other disease specified by the department.

(5) That the owner report, within 24 hours of its last sighting, any hound that is lost during hunting, pursuing, or tracking activities.

(6) That the hound's tag identification number be recorded on the hunting tag of any animal taken using the services of the hound.

(d) If a hound tag program is established, the commission may adjust the amount of the fees for the hound tag as necessary, to fully recover, but not exceed, all reasonable administrative and implementation costs of the department and the commission relating to the program.

Comment. Section 31505 continues former Fish and Game Code Section 3032(a)(2)-(d) without change.

1 **§ 31510. Use of dog to pursue specified mammals**

2 31510. (a) It is unlawful to permit or allow any dog to pursue any of the
3 following mammals, under the specified conditions:

4 (1) A big game mammal, during the closed season for that mammal.

5 (2) A fully protected, rare, or endangered mammal, at any time.

6 (3) A bear or bobcat, at any time.

7 (4) A mammal in a game refuge or ecological reserve, if hunting within that
8 refuge or ecological reserve is unlawful.

9 (b) This section does not apply to the use of dogs to pursue bears or bobcats by
10 federal, state, or local law enforcement officers, or their agents or employees,
11 while carrying out official duties as required by law.

12 **Comment.** Subdivision (a) of Section 31510 continues former Fish and Game Code Section
13 3960(b) without substantive change.

14 Subdivision (b) continues former Fish and Game Code Section 3960(c)(3) without substantive
15 change.

16 **Notes.** (1) Existing Fish and Game Code Section 3960(b) declares it unlawful to either
17 “permit” or “allow” a dog to engage in the conduct described in the provision.

18 **The Commission invites comment on whether one of these two terms, which in this**
19 **context appear to be synonymous, can be deleted without substantively changing the**
20 **meaning of the provision.**

21 (2) The existing Fish and Game Code contains no definition of the term “big game mammal,”
22 which appears in Section 3960(b) as well as several other sections of the code. See existing
23 Sections 3004.5(j)(2), 3214, 3960.

24 The term “big game” is also used in several sections of the existing code, without definition.
25 See existing Sections 3953, 12013.3, and 12013.5. However, one code section, Section
26 3004.5(a)(1), refers to the term “as defined in the department’s mammal hunting regulations.”

27 Those regulations provide that “‘Big game’ means the following: deer (genus *Odocoileus*), elk
28 (genus *Cervus*), pronghorn antelope (genus *Antilocarpa*), wild pig (feral pigs, European wild pigs
29 and their hybrids (genus *Sus*), black bear (genus *Ursus*), and Nelson bighorn sheep (subspecies
30 *Ovis canadensis nelsoni*) in the areas described in subsection 4902(b) of the Fish and Game
31 Code.” 14 CCR § 350.

32 **The Commission invites comment on whether a definition of the term “big game**
33 **mammal” should be added to the proposed law. Such a definition could either reiterate the**
34 **existing regulation’s substantive content or could instead incorporate the regulation by**
35 **reference (which would preserve the possibility of the department revising the content if**
36 **necessary).**

37 CHAPTER 2. UNCONTROLLED DOGS

38 **§ 31550. Capture or dispatch by department**

39 31550. (a) The department may take any of the following actions:

40 (1) Capture any dog not under the reasonable control of its owner or handler,
41 when that uncontrolled dog is pursuing, in violation of Section 31510, any of the
42 following mammals:

43 (A) A big game mammal.

44 (B) A bear or bobcat.

45 (C) A fully protected, rare, or endangered mammal.

(2) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any of the following mammals, under the specified conditions:

(A) A big game mammal, during the closed season on that mammal.

(B) A bear or bobcat, at any time.

(C) A fully protected, rare, or endangered mammal, at any time.

(D) A mammal in a game refuge or ecological reserve, if hunting within that refuge or ecological reserve is unlawful.

(b) No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section.

(c) If a dog captured or dispatched pursuant to this section has identification, its owner shall be notified by the department within 72 hours after the capture or dispatch.

Comment. Section 31550 continues former Fish and Game Code Section 3960(c)(1), (2), and (4) without substantive change.

Notes. (1) Proposed Section 31550 is intended to restate existing Fish and Game Code Section 3960(c)(1), (2), and (4) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“(c)(1) The department may take any of the following actions:

(A) Capture any dog not under the reasonable control of its owner or handler, when that uncontrolled dog is pursuing, in violation of this section, any big game mammal, any bear or bobcat, or any fully protected, rare, or endangered mammal.

(B) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any big game mammal during the closed season on that mammal, and the department may capture or dispatch any dog inflicting injury or immediately threatening to inflict injury on any bear or bobcat at any time, or any fully protected, rare, or endangered mammal at any time.

(C) Capture or dispatch any dog inflicting injury or immediately threatening to inflict injury to any mammal in a game refuge or ecological reserve if hunting within that refuge or ecological reserve is unlawful.

(2) No criminal or civil liability shall accrue to any department employee as a result of enforcement of this section.

....

(4) Owners of dogs with identification, that have been captured or dispatched, shall be notified within 72 hours after capture or dispatch.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Fish and Game Section 3960(b) (which would be continued by proposed Section 31510(a)) prohibits permitting or allowing a dog to pursue four described categories of mammals under specified conditions:

(a) A big game mammal, during the closed season for that mammal,

(b) A fully protected, rare, or endangered mammal, at any time,

(c) A bear or bobcat, at any time, or

(d) A mammal in a game refuge or ecological reserve, if hunting within that refuge or ecological reserve is unlawful.

Existing Section 3960(c)(1)(A) (which would be continued by proposed Section 31550(a)(1)) authorizes the Department of Fish and Wildlife to capture any uncontrolled dog that is *pursuing* a mammal listed in the first three categories above, but not the fourth (mammals in game refuges and ecological preserves where hunting is not permitted).

Should the fourth category be included?

1 **§ 31555. Seizure or dispatch generally**

2 31555. (a) Whenever an employee of the department is not present to carry out
3 the provisions of Section 31550 with respect to any dog inflicting injury or
4 immediately threatening to inflict injury to any deer, elk, or prong-horned antelope
5 during the closed season for those mammals, any property owner, lessee, person
6 holding a permit for the purpose of grazing livestock, or that person's employee,
7 may seize or dispatch the dog, if the dog is found on that person's land or premises
8 without the permission of the person who is in immediate possession of the land.

9 (b) Notwithstanding subdivision (a), if a dog described in subdivision (a) bears
10 any readily visible identification tag or license tag required by Section 30951 of
11 the Food and Agricultural Code, the dog may be dispatched under this section only
12 if the dog has, and its owner has been notified that the dog has, previously
13 threatened any of these species.

14 (c) No action, civil or criminal, shall be maintained based on a dog lawfully
15 seized or dispatched pursuant to **this article**.

16 (d) If a dog seized or dispatched under this section bears the identification tag or
17 license tag required by Section 30951 of the Food and Agricultural Code, its
18 owner shall be notified within 72 hours of the seizure or dispatch.

19 **Comment.** Section 31555 restates former Fish and Game Code Section 3961 without
20 substantive change.

21 **Notes.** (1) Proposed Section 31555 is intended to restate existing Fish and Game Code
22 Section 3961 to improve its clarity, without changing its substantive effect. The existing section
23 read as follows:

24 “3961. Whenever an employee of the department is not present to carry out the provisions of
25 Section 3960 with respect to any dog inflicting injury or immediately threatening to inflict injury
26 to any deer, elk, or prong-horned antelope during the closed season for these mammals, any
27 property owner, lessee, person holding a permit for the purpose of grazing livestock, or his or her
28 employee, may seize or dispatch the dog if it is found on his or her land or premises without the
29 permission of the person who is in immediate possession of the land. If the dog has on it any
30 readily visible identification tag or license tag as prescribed by Section 30951 of the Food and
31 Agricultural Code, and the dog is found in the act of immediately threatening to injure deer, elk,
32 or prong-horned antelope, the dog may only be dispatched under this section if the dog has, and
33 the owner has been notified that the dog has, previously threatened any of these species.

34 No action, civil or criminal, shall be maintained for a dog lawfully seized or dispatched
35 pursuant to this article.

36 The owner of a dog shall be notified within 72 hours of the seizure or dispatching of that dog
37 under this section if it had the identification tag or license tag which is required pursuant to
38 Section 30951 of the Food and Agricultural Code.”

39 **The Commission invites comment on whether the restatement would cause any**
40 **substantive change in the meaning of the provision.**

41 (2) The second paragraph of existing Fish and Game Section 3961 provides:

42 “No action, civil or criminal, shall be maintained for a dog lawfully seized or dispatched
43 pursuant to this article.”

44 However, the reference to “article” in this provision is a clear error requiring correction, as
45 Section 3961 is not and never has been contained in an article. The section does appear in a
46 chapter with another section, referred to in Section 3961, providing for the dispatch of a dog

(Section 3960). However, the dispatch provided for in Section 3960 is by the Department, rather than by a private individual.

The Commission invites comment on how the erroneous reference to “this article” in existing Section 3961 should be corrected.

TITLE 3. DEPREDATOR CONTROL

§ 31600. Department take of depredator

31600. The department may take any mammal that it determines is unduly preying on any bird, mammal, or fish.

Comment. Section 31600 continues the second paragraph of former Fish and Game Code Section 4153 without substantive change.

§ 31605. Immature mammals in den

31605. (a) It is unlawful to do either of the following to an immature depredator mammal while it is in its den:

(1) Use a snare, hook, or barbed wire to remove the mammal.

(2) Use fire to kill the mammal.

(b) Nothing in this section shall prohibit the use of fire-ignited gas cartridges or other products registered or permitted under the Federal Insecticide, Rodenticide, and Fungicide Act (7 U.S.C. 136 et seq.).

Comment. Subdivision (a) of Section 31605 restates the first paragraph of former Fish and Game Code Section 4180.1 without substantive change.

Subdivision (b) continues the second paragraph of former Fish and Game Code Section 4180.1 without substantive change.

Notes. (1) Proposed Section 31605 is intended to restate the first paragraph of existing Fish and Game Code Section 4180.1 to clarify the meaning of that sentence, without changing its substantive effect. The existing sentence reads as follows:

“It is unlawful to use snares, hooks, or barbed wire to remove from the den, or fire to kill in the den, any immature depredator mammal.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) **The Commission invites comment on the meaning of the term “depredator mammal” as used in Section 4180.1.**

§ 31610. Identification of depredator

31610. The department shall tag, brand, or otherwise identify in a persistent and distinctive manner any large depredatory mammal relocated by, or relocated with the approval of, the department for game management purposes.

Comment. Section 31610 continues former Fish and Game Code Section 4190 without change.

Notes. (1) Existing Fish and Game Code Section 4190 refers to a “large” depredatory mammal.

1 **The Commission invites comment on whether more precise or descriptive language might**
2 **be substituted for the word “large” to provide better notice of the scope of the section’s**
3 **prohibition.**

4 **(2) The Commission invites comment on the meaning of the term “depredatory mammal”**
5 **as used in Section 4190.**

6 PART 2. DISEASE CONTROL

7 **§ 31700. Disease outbreak**

8 31700. (a) Fur-bearing mammals, game mammals, and nongame mammals,
9 when involved in dangerous disease outbreaks, may be taken by duly constituted
10 officials of any of the following:

11 (1) The United States Department of Agriculture.

12 (2) The United States Department of the Interior.

13 (3) The United States Department of Health and Human Services.

14 (4) The California Department of Food and Agriculture.

15 (5) The California Department of Public Health.

16 (6) The department.

17 (b) A county official may take fur-bearing mammals, game mammals, and
18 nongame mammals pursuant to this section with the prior approval of and in a
19 manner approved by the director or the director’s designee.

20 **Comment.** Section 31700 continues former Fish and Game Code Section 4011 without
21 substantive change.

22 PART 3. CLASSES OF MAMMALS

23 TITLE 1. GAME MAMMALS

24 CHAPTER 1. GENERAL PROVISIONS

25 **§ 31800. Waste of game mammal**

26 31800. (a) Except as provided in subdivision (b), no person shall through
27 carelessness or neglect allow any game mammal that is in that person’s
28 possession, or any portion of the game mammal’s flesh that is usually eaten by
29 humans, to be needlessly wasted.

30 (b) The prohibition in subdivision (a) does not apply to game mammals taken
31 pursuant to Section 35215, 35610, 35710, or 36010.

32 **Comment.** Section 31800 restates the part of the first sentence of former Fish and Game Code
33 Section 4304 applicable to game mammals, and the second sentence of Section 4304, without
34 substantive change.

35 **Notes.** (1) Proposed Section 31800 restates part of the first sentence of existing Fish and
36 Game Code Section 4304 applicable to game mammals, and the second sentence of that section,

1 to clarify the meaning of those provisions, without changing their substantive effect. The existing
2 provisions read as follows:

3 “4304. [N]or shall any person at any time leave through carelessness or neglect any game
4 mammal ... which is in his possession, or any portion of the flesh thereof usually eaten by
5 humans, to go needlessly to waste. The provisions of this section shall not apply to game
6 mammals taken under the authority of Sections 4152 and 4183 of this code.”

7 **The Commission invites comment on whether the restatement would cause any**
8 **substantive change in the meaning of the provision.**

9 (2) Existing Section 4183, which is cross-referenced in existing Section 4304, was repealed in
10 1984. 1984 Cal. Stat. ch. 1365. The repealed section related to taking bears that kill livestock.

11 **The Commission invites comment on whether a reference to a different code section**
12 **should be substituted for the reference to Section 4183.**

13 CHAPTER 2. BIG GAME MANAGEMENT ACCOUNT

14 § 31900. Account established

15 31900. The Big Game Management Account is hereby established within the
16 Fish and Game Preservation Fund.

17 **Comment.** Section 31900 continues former Fish and Game Code Section 3953(a) without
18 change.

19 § 31905. Use of funds

20 31905. (a) Funds deposited in the Big Game Management Account shall be
21 available for expenditure upon appropriation by the Legislature to the department.
22 These funds shall be expended solely for the purposes set forth in this chapter,
23 Sections 34955, 34960, 35810, and 35815, subdivisions (b) and (c) of Section
24 35830, Sections 35900, 35905, 35915, and 37300, and Chapter 6 (commencing
25 with Section 34500) of Title 6 of Part 4 of Division 9, including acquiring land,
26 completing projects, and implementing programs to benefit antelope, elk, deer,
27 wild pigs, bear, and sheep, and expanding public hunting opportunities and related
28 public outreach.

29 (b) Any land acquired with funds from the Big Game Management Account
30 shall be acquired in fee title or protected with a conservation easement and, to the
31 extent possible, be open or provide access to the public for antelope, elk, deer,
32 wild pig, bear, or sheep hunting.

33 (c) The department may also use funds from the Big Game Management
34 Account to pay for administrative and enforcement costs of the programs and
35 activities described in this section. The amount allocated from the account for
36 administrative costs shall be limited to the reasonable costs associated with
37 administration of the programs and activities described in this section.

38 **Comment.** Section 31905 continues former Fish and Game Code Section 3953(c) without
39 substantive change.

1 **§ 31910. Non-profit organizations**

2 31910. The department may make grants to, reimburse, or enter into contracts or
3 other agreements, as defined in **subdivision (a) of Section 1571**, with nonprofit
4 organizations for the use of the funds from the Big Game Management Account to
5 carry out the purposes of this section, including related habitat conservation
6 projects.

7 **Comment.** Section 31910 continues former Fish and Game Code Section 3953(d) without
8 substantive change.

9 **§ 31915. Advisory committee**

10 31915. An advisory committee, as determined by the department, that includes
11 interested nonprofit organizations that have goals and objectives directly related to
12 the management and conservation of big game species and primarily represent the
13 interests of persons licensed pursuant to Section 10210, shall review and provide
14 comments to the department on all proposed projects funded from the Big Game
15 Management Account, to help ensure that the requirements of this chapter have
16 been met.

17 **Comment.** Section 31915 continues the first sentence of former Fish and Game Code Section
18 3953(e) without substantive change.

19 **§ 31920. Online information**

20 31920. The department shall post, on an Internet website, budget information
21 and a brief description for all projects funded from the Big Game Management
22 Account.

23 **Comment.** Section 31920 continues the second sentence of former Fish and Game Code
24 Section 3953(e) without substantive change.

25 **§ 31925. Exemptions**

26 31925. Big game projects authorized pursuant to this section are not subject to
27 Part 2 (commencing with Section 10100) of Division 2 of the Public Contract
28 Code or Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of
29 the Military and Veterans Code.

30 **Comment.** Section 31925 continues former Fish and Game Code Section 3953(f) without
31 change.

32 **§ 31930. Accountability**

33 31930. The department shall maintain the internal accountability necessary to
34 ensure compliance with the collection, deposit, and expenditure of funds specified
35 in this section.

36 **Comment.** Section 31930 continues former Fish and Game Code Section 3953(g) without
37 change.

1 **§ 31935. Transfer of funds from other accounts**

2 31935. The Augmented Deer Tags Account, Bighorn Sheep Permit Account,
3 and Wild Pig Account, within the Fish and Game Preservation Fund, shall be
4 consolidated and any remaining funds in these accounts transferred to the Big
5 Game Management Account, consistent with Sections 32960, 33305, 34240,
6 34865, 35830, and 37220. The department, after consultation with the Department
7 of Finance and the Legislative Analyst's Office, shall provide recommendations to
8 the Legislature for consolidation of additional dedicated accounts within the Fish
9 and Game Preservation Fund if, in the determination of the department,
10 consolidation would serve to reduce administrative costs to the department and
11 enhance its ability to meet current needs, while still preserving the generally stated
12 purpose of the dedicated accounts.

13 **Comment.** Section 31935 continues former Fish and Game Code Section 13205 without
14 substantive change.

15 **TITLE 2. FUR-BEARING MAMMALS**

16 **§ 32150. Allowed methods of taking**

17 32150. (a) A fur-bearing mammal may be taken only with a trap, firearm, bow
18 and arrow, dog, or poison.

19 (b) It is unlawful to use poison to take fur-bearing mammals without a permit
20 from the department. The department may issue the permit upon a written
21 application indicating the kind of poison desired to be used and the time and place
22 of use.

23 **Comment.** Subdivision (a) of Section 32150 continues former Fish and Game Code Section
24 4002 without substantive change.

25 Subdivision (b) continues former Fish and Game Code Section 4003 without substantive
26 change.

27 **§ 32155. Take and possession**

28 32155. (a) Except as provided by Section 11200, fur-bearing mammals that are
29 injuring property may be taken at any time and in any manner not prohibited by
30 this code or regulations adopted pursuant to this code.

31 (b) Raw fur removed from a fur-bearing mammal that is taken pursuant to
32 subdivision (a) shall not be sold.

33 (c) A trap used to take a fur-bearing mammal pursuant to subdivision (a) shall be
34 inspected, and any animal found in a trap shall be removed, at least once daily.
35 The inspection and removal shall be done by the person who sets the trap, the
36 owner of the land where the trap is set, or an agent of either.

37 **Comment.** Section 32155 continues former Fish and Game Code Section 4180 without
38 substantive change.

TITLE 3. NONGAME MAMMALS

CHAPTER 1. GENERAL PROVISIONS

§ 32300. Take or possession

32300. A nongame mammal may not be taken or possessed except as provided in this code or in accordance with regulations adopted by the commission.

Comment. Section 32300 continues the second sentence of former Fish and Game Code Section 4150 without change.

§ 32305. Protection of property

32305. (a) Except as provided in paragraph (6) of subdivision (b) of Section 11200, a nongame mammal that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take a nongame mammal described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a nongame mammal pursuant to this section is exempt from Section 9500, except when providing trapping services for a fee.

(c) Raw fur from a nongame mammal taken pursuant to this section shall not be sold.

Comment. Section 32305 restates the part of former Fish and Game Code Section 4152 applicable to nongame mammals without substantive change.

See also Section 11000 (inspection and removal of animals from traps).

Notes. (1) Proposed Section 32305 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to nongame mammals to clarify the meaning of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping

services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

The Commission invites comment on whether or how the term “immediate possession” differs from “possession,” and whether the more familiar term “possession” could be substituted without substantively changing the meaning of the provision.

§ 32310. Agreements relating to control of harmful nongame mammals

32310. (a) The department may enter into cooperative agreements with any agency of the state or the United States for the purpose of controlling harmful nongame mammals.

(b) The department may enter into cooperative contracts with the United States Fish and Wildlife Service in the Department of the Interior for the purpose of controlling or eradicating any nongame mammal, and may expend any money made available to the department for that purpose.

Comment. Subdivision (a) of Section 32310 continues the first paragraph of former Fish and Game Code Section 4153 without change.

Subdivision (b) restates former Fish and Game Code Section 4154 without substantive change.

Note. Proposed Section 32310(b) restates existing Fish and Game Code Section 4154 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4154. The department may enter into cooperative contracts with the United States Fish and Wildlife Service in the Department of the Interior in relation to the control of nongame mammals and for that purpose may expend any money made available to the department for expenditure for control or eradication of nongame mammals.”

The Commission invites comment on whether the proposed restatement would cause any substantive change in the meaning of the provision.

CHAPTER 2. MARINE MAMMALS

§ 32500. Taking

32500. (a) It is unlawful to take any marine mammal except in accordance with the provisions of the following:

(1) The Marine Mammal Protection Act of 1972 (Chapter 31 (commencing with Section 1361) of Title 16 of the United States Code).

(2) The provisions of Title 50 of the Code of Federal Regulations.

(3) Any regulations adopted pursuant to subdivision (b).

(b) If federal laws or regulations permit the state to assume jurisdiction over marine mammals, the commission may adopt regulations governing marine mammals and their taking.

(c) For purposes of this chapter, “marine mammals” means sea otters, whales, dolphins, porpoises, seals, and sea lions.

(d) Notwithstanding Section 4400, subdivision (a) of Section 8400, Section 32700, or **subdivision (a) of Section 12008**, the punishment for any violation of this section is a fine of not more than twenty-five thousand dollars (\$25,000) for each unlawful taking, imprisonment in a county jail as provided by Section 4400, subdivision (a) of Section 8400, Section 32700, or **subdivision (a) of Section 12008**, or both the fine and imprisonment.

Comment. Subdivisions (a)-(c) of Section 32500 restates former Fish and Game Code Section 4500 without substantive change.

Subdivision (d) continues the part of former Fish and Game Code Section 12003.2 applicable to former Fish and Game Code Section 4500 without substantive change.

Note. Subdivisions (a)-(c) of proposed Section 32500 are intended to restate existing Fish and Game Code Section 4500 to clarify the meaning of that section, without changing its substantive effect. The existing provision reads as follows:

“4500. (a) It is unlawful to take any marine mammal except in accordance with provisions of the Marine Mammal Protection Act of 1972 (Chapter 31 (commencing with Section 1361) of Title 16 of the United States Code) or provisions of Title 50 of the Code of Federal Regulations, or pursuant to subdivision (b) of this section.

(b) At such time as federal laws or regulations permit the state to assume jurisdiction over marine mammals, the commission may adopt regulations governing marine mammals and the taking thereof.

(c) For purposes of this chapter, “marine mammals” means sea otters, whales, dolphins, porpoises, seals, and sea lions.”

The Commission invites comment on whether the restatement of Section 4500 would cause any substantive change in the meaning of the provision.

TITLE 4. FULLY PROTECTED MAMMALS

§ 32700. Take generally prohibited

32700. (a) Except as provided in this part, **Section 2081.7, or Section 2835**, a fully protected mammal may not be taken or possessed at any time.

(b) No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take any fully protected mammal, and no issued permit or license shall have any force or effect for that purpose.

(c) Except as otherwise provided in Section 597 of the Penal Code, the punishment for a violation of this section is a fine of not more than twenty-five thousand dollars (\$25,000) for each unlawful taking, imprisonment in the county jail for not more than one year, or both that fine and imprisonment.

(d) The judge before whom any person is tried for a violation of this section may, in the court’s discretion and upon the conviction of that person, order the forfeiture of any proceeds resulting from the taking of the fully mammal.

Comment. Subdivisions (a) and (b) of Section 32700 continue the first two sentences of former Fish and Game Code Section 4700(a)(1) without substantive change.

Subdivision (c) combines and continues the part of former Fish and Game Code Section 12003.2 applicable to former Fish and Game Code Section 4700, and former Fish and Game Code Section 12008(c), without substantive change.

Subdivision (d) continues the part of former Fish and Game Code Section 12159.5 applicable to fully protected mammals without substantive change.

Notes. (1) Existing Fish and Game Code Section 4700(a)(1) provides that “Except as provided in Section 2081.7 or 2835, fully protected mammals or parts thereof may not be taken or possessed at any time.” However, Section 4700 itself (which would be continued by the provisions in this proposed title) provides exceptions to that prohibition.

In addition, existing Section 4902 (which would be continued by proposed Sections 35900, 35905, and 35910) provides for limited sport hunting of a category of bighorn sheep (mature Nelson bighorn rams), which are generally classified by existing Section 4700(b)(2) as fully protected mammals.

Proposed Section 32700 would therefore restate the list of provisions containing exceptions to the prohibition against the take or possession of fully protected mammals to include the provisions of this part.

The Commission invites comment on whether that restatement would substantively change the meaning of existing Section 4700(a)(1).

(2) Proposed Section 32700(c) is intended to combine and continue the part of existing Fish and Game Code Section 12003.2 applicable to existing Section 4700, and existing Fish and Game Code Section 12008(c), while preserving the substantive effect of both provisions. The two existing provisions read as follows:

“12003.2. Notwithstanding Section 12002 or 12008, the punishment for any violation of Section 4500 or 4700 is a fine of not more than twenty-five thousand dollars (\$25,000) for each unlawful taking, imprisonment in a county jail for the period prescribed in Section 12002 or 12008, or both the fine and imprisonment.

12008. Except as otherwise provided in Section 597 of the Penal Code, the punishment for a violation of any of the following provisions is a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment:

...

(c) Chapter 8 (commencing with Section 4700) of Part 3 of Division 4.”

The Commission invites comment on whether proposed Section 32700(c) continues both provisions without substantive change.

§ 32705. Take for scientific purposes

32705. (a) The department may authorize the taking of a fully protected mammal for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species, subject to the following:

(1) Before authorizing the take of a fully protected mammal, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization.

(2) The notification shall be published in the California Regulatory Notice Register, and be made available to each person who has notified the department, in writing, of that person’s interest in fully protected species and has provided an email address, if available, or postal address to the department.

(3) Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(b) As used in this section, “scientific research” does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

Comment. Section 32705 continues the third through sixth sentences of former Fish and Game Code Section 4700(a)(1), and Section 4700(a)(2), without substantive change.

§ 32710. Imported animal

32710. A legally imported fully protected mammal may be possessed under a permit issued by the department.

Comment. Section 32710 continues former Fish and Game Code Section 4700(a)(3) without change.

PART 4. SPECIFIC TYPES OF MAMMALS

TITLE 1. ANTELOPE

CHAPTER 1. GENERAL PROVISIONS

§ 32900. Classification

32900. For the purposes of this code, a prong-horned antelope (genus *Antilocapra*) is a game mammal.

Comment. Section 32900 continues the part of former Fish and Game Code Section 3950(a) applicable to antelope without substantive change.

§ 32905. Provisions not exclusive

32905. The provisions of this title are not intended to be exclusive. Other provisions that govern antelope include, but are not limited to, the following provisions:

(a) Section 31555.

(b) Section 8630.

Comment. Section 32905 is new. It is added for drafting convenience.

CHAPTER 2. TAGS

§ 32950. Issuance of tags

32950. (a) The commission shall direct the department to annually authorize not less than one antelope tag or more than 1 percent of the total number of tags available for the purpose of raising funds for programs and projects to benefit antelope. These tags may be sold at auction to residents or nonresidents of the

1 state or by another method and are not subject to the fee limitation prescribed in
2 Section 32955.

3 (b) The commission shall direct the department to annually authorize one
4 antelope tag of the total number of tags available for issuance to nonresidents of
5 the state.

6 **Comment.** Section 32950 continues former Fish and Game Code Section 331(c)-(d) without
7 substantive change.

8 **Note.** Existing law does not include an express requirement that a person have a tag in order
9 to lawfully take an antelope. As seen below, there are provisions governing the issuance of a tag,
10 but no requirement that a tag be obtained. Compare proposed Sections 33205 (bear), 34200
11 (deer), 37150 (wild pig). Nor is there any provision requiring that a tag be attached to an antelope
12 that has been taken, that a tag be countersigned, or that any part of the antelope be retained and
13 shown to law enforcement on demand. Compare proposed Sections 33215, 33220 (bear), 34110,
14 34210 (deer). These seem like significant gaps in the law governing sport hunting of antelope.

15 **The Commission invites comment on this issue.**

16 **§ 32955. Fee for tags**

17 32955. The fee for an antelope tag shall be as follows:

18 (a) For a resident of the state, a base fee of fifty-five dollars (\$55), adjusted
19 under Section 3755.

20 (b) For a nonresident, the commission shall, by regulation, fix the fee at not less
21 than a base fee of three hundred fifty dollars (\$350), adjusted under Section 3755.

22 **Comment.** Section 32955 restates the first three sentences of former Fish and Game Code
23 Section 331(b) without substantive change.

24 **Note.** Section 32955 restates the first three sentences of former Fish and Game Code Section
25 331(b) to clarify the meaning of that language, without changing its substantive effect. The first
26 three sentences of former Fish and Game Code Section 331(b) read as follows:

27 “331. (b) The department may issue a tag upon payment of a fee. The fee for a tag shall be
28 fifty-five dollars (\$55) for a resident of the state, as adjusted under Section 713. On or before July
29 1, 2007, the commission shall, by regulation, fix the fee for a nonresident of the state at not less
30 than a fee of three hundred fifty dollars (\$350), as adjusted under Section 713.

31 **The Commission invites comment on whether the restatement would cause any**
32 **substantive change in the meaning of these sentences.**

33 **§ 32960. Deposit of fees**

34 32960. (a) Except as provided in Section 32965, all revenues from the sale of
35 antelope tags, including any fundraising tags, shall be deposited in the Big Game
36 Management Account established in Section 31900 to permit separate
37 accountability for the receipt and expenditure of these funds.

38 (b) Upon appropriation by the Legislature, fees from the sale of antelope tags
39 shall be expended, in addition to moneys budgeted for salaries of persons in the
40 department as set forth in Section 31905.

41 **Comment.** Subdivision (a) of 32960 continues the part of the first sentence of former Fish and
42 Game Code Section 3953(b) applicable to antelope without substantive change.

43 Subdivision (b) continues the fourth sentence of former Fish and Game Code Section 331(b)
44 without substantive change.

1 **§ 32965. Sale of tag by nonprofit organization**

2 32965. (a) A nonprofit organization designated by the department to assist in the
3 sale of antelope fundraising tags that are sold on behalf of the department for the
4 purpose of raising funds for specified programs and projects pursuant to
5 subdivision (a) of Section 32950 is authorized to retain 5 percent of the amount of
6 the sale price of the tag as a reasonable vendor fee.

7 (b) Within 30 days of the date of the sale, the selling nonprofit organization shall
8 send the department 95 percent of the total auction sale price of the tag, with an
9 itemized receipt showing the sale price and the 5-percent reduction retained by the
10 nonprofit organization as a vendor's fee.

11 **Comment.** Subdivision (a) of Section 32965 continues the part of former Fish and Game Code
12 Section 709 applicable to antelope without substantive change.

13 Subdivision (b) continues the part of the second sentence of former Fish and Game Code
14 Section 3953(b) applicable to antelope without change.

15 CHAPTER 3. POPULATION MANAGEMENT

16 **§ 33000. Regulation of take**

17 33000. The commission may determine and fix the area or areas, the seasons
18 and hours, the bag and possession limit, and the sex and total number of antelope
19 (*Antilocapra americana*) that may be taken under regulations that the commission
20 may adopt from time to time. Only a person possessing a valid hunting license,
21 who has not received an antelope tag under these provisions during a period of
22 time specified by the commission, may obtain a tag for the taking of antelope.

23 **Comment.** Section 33000 continues former Fish and Game Code Section 331(a) without
24 change.

25 CHAPTER 4. PENALTIES

26 **§ 33050. Enhanced penalty for specified violations**

27 33050. (a) Notwithstanding Section 4400 or subdivision (a) of Section 8400, the
28 punishment for any person who knowingly violated and has been convicted of any
29 of the following provisions where the violation involved a trophy antelope shall be
30 a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand
31 dollars (\$40,000), or imprisonment in a county jail for not more than one year, or
32 both that fine and imprisonment:

33 (1) Section 8015, if the person took an antelope outside the established season.

34 (2) Section 8125.

35 (3) Section 8300, if the person failed to procure the required license or tag prior
36 to taking an antelope.

37 (4) Section 31800.

38 (5) Section 257.5 of Title 14 of the California Code of Regulations.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of antelope or parts of antelope.

(c) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 31900 and shall be used for the big game management purposes described in that section.

(d) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 33050 continues the part of former Fish and Game Code Section 12013.3 applicable to antelope without substantive change.

TITLE 2. BEAR

CHAPTER 1. GENERAL PROVISIONS

§ 33100. Classification

33100. For the purposes of this code, a black bear, brown bear, and cinnamon bear (genus *Euarctos*) are game mammals.

Comment. Section 33100 continues the part of former Fish and Game Code Section 3950(a) applicable to black, brown, and cinnamon bears, without substantive change.

§ 33105. Provisions not exclusive

33105. The provisions of this title are not intended to be exclusive. Other provisions that govern bear include, but are not limited to, Section 26765.

Comment. Section 33105 is new. It is added for drafting convenience.

§ 33110. Bear taken out of state

33110. The provisions of this title relating to the possession of bear also apply to bear taken outside this state and transported into this state.

Comment. Section 33110 continues former Fish and Game Code Section 4760 without substantive change.

CHAPTER 2. TAKE GENERALLY

§ 33200. Metal-jawed trap prohibited

33200. No person, including an employee of the state, federal or a county government, shall take a bear using an iron-jawed, steel-jawed or other type of metal-jawed trap, and no provision of this code or any other law shall be construed

1 to authorize, or to permit the authorizing of, the use of an iron-jawed, steel-jawed
2 or other type of metal-jawed trap, to take a bear.

3 **Comment.** Section 33200 continues former Fish and Game Code Section 3011 without
4 substantive change.

5 **§ 33205. Tag required**

6 33205. (a) It is unlawful to take any bear with a firearm, trap, or bow and arrow,
7 without first procuring a tag authorizing the taking of that bear in accordance with
8 this chapter, but no iron or steel-jawed or any type of metal-jawed trap shall be
9 used to take any bear.

10 (b) In addition to any other penalty or fine imposed pursuant to this code, if a
11 person is convicted of a violation of this section, and was previously convicted of
12 one or more offenses related to a taking in violation of this section, Section 9500,
13 Section 30505, Section 34200, or former Fish and Game Code Section 3700, or
14 related to the sale or purchase of a part of a bear in violation of Section 33455,
15 separate from the offense before the court, the court may order as a condition of
16 probation that the person attend the hunter education course designated in Section
17 10405, and perform community service, preferably relating to natural resources if
18 that type of community service is available, as follows:

19 (1) If the person has one separate conviction, not more than 200 hours of
20 community service.

21 (2) If the person has two or more separate convictions, not more than 300 hours
22 of community service.

23 **Comment.** Subdivision (a) of Section 33205 continues former Fish and Game Code Section
24 4750 without substantive change.

25 Subdivision (b) restates the part of former Fish and Game Code Section 12001.5 applicable to
26 former Fish and Game Code Section 4750 without substantive change.

27 **Note.** Subdivision (b) of proposed Section 33205 is intended to restate the part of former Fish
28 and Game Code Section 12001.5 applicable to former Fish and Game Code Section 4750 without
29 substantive change, except to correct an apparent drafting error explained below.

30 Existing Section 12001.5 reads as follows:

31 “12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person
32 has been convicted of one or more offenses that was a violation of a section listed in subdivision
33 (b) separate from the offense before the court, the court may order as a condition of probation
34 upon conviction of the offense before the court that is also a violation of a section listed in
35 subdivision (b), that the person attend the hunter education course designated in Section 3051 and
36 perform community service, preferably relating to natural resources if that type of community
37 service is available, as follows:

38 (1) If the person has one separate conviction, not more than 200 hours of community service.

39 (2) If the person has two or more separate convictions, not more than 300 hours of community
40 service.

41 (b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and
42 4750, and a sale or purchase of parts of a bear in Section 4758.”

43 As indicated, Section 12001.5(b) expressly applies to a violation of several identified sections,
44 including “Section 3700,” a section that at the time Section 12001.5 was enacted generally
45 prohibited the taking of a migratory game bird without possessing a required state duck *stamp*

(the only form of special permission that at that time authorized the take of migratory game birds).

Subsequent to the enactment of Section 12001.5, the Department began alternatively authorizing the take of migratory game birds with an electronic validation, issued through the Department's new Automated License Data System (ALDS). Thereafter, Section 3700.1, which mirrored the language of Section 3700 except to apply to the taking of a migratory game bird without possessing that validation, was added to the existing code. See 2001 Cal. Stat. ch. 112. However, notwithstanding the similarity of the language and apparent intent of the two sections relating to the take of migratory game birds, a concurrent amendment was never made to Section 12001.5 to provide for application of that section to a violation of Section 3700.1.

The Commission believes this failure to amend Section 12001.5 was an inadvertent drafting error. Further, as Section 3700 was repealed in 2015 based on the discontinued use of duck stamps for hunting purposes (see 2015 Cal. Stat. ch. 683), Section 12001.5 now has *no* application to an unauthorized take of migratory game birds, on or after January 1, 2016. As the Commission believes this result would be contrary to what was intended by the Legislature, the provisions of the proposed law that continue existing Section 12001.5 would also apply to a violation of Section 3700.1.

The Commission invites comment on the restatement of the part of Section 12001.5 applicable to former Fish and Game Code Section 4750 in proposed Section 33205.

§ 33210. Use of tag

33210. (a) The person to whom a bear tag has been issued shall carry the tag while hunting bear. Upon the killing of any bear, that person shall immediately fill out the tag completely, legibly, and permanently, and cut out or punch out and completely remove notches or punch holes for the month and the date of the kill. One part of the tag shall be immediately attached to the ear of the bear and kept attached during the open season and for 15 days thereafter. The holder of the bear tag shall immediately, upon harvesting a bear, notify the department in a manner specified by the commission.

(b) Except as otherwise provided by this code or regulations adopted pursuant to this code, it is unlawful to possess any untagged bear.

Comment. Section 33210 continues former Fish and Game Code Section 4753 without substantive change.

Note. The Commission invites comment on whether a more common term could be substituted for the word "harvesting" as used in existing Fish and Game Code Section 4753.

§ 33215. Countersigning

33215. Any person legally killing a bear in this state shall have the tag for that bear countersigned by a commissioner, a person employed by the department, a person designated for that purpose by the commission, a notary public, a postmaster, a peace officer, or an officer authorized to administer oaths, before transporting the bear, except to transport the bear to the nearest person authorized by this section to countersign the tag on the route from where the bear is taken to that person.

Comment. Section 33215 restates former Fish and Game Code Section 4755 without substantive change.

Note. Proposed Section 33215 is intended to restate existing Fish and Game Code Section 4755 to improve its clarity, without changing its substantive effect. The existing provisions read as follows:

“4755. Any person legally killing a bear in this state shall have the tag countersigned by a fish and game commissioner, a person employed in the department, a person designated for this purpose by the commission, or by a notary public, postmaster, postmistress, peace officer or by an officer authorized to administer oaths, before transporting that bear except for the purpose of taking it to the nearest officer authorized to countersign the tag, on the route being followed from the point where the bear is taken.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 33220. Retention of skin and head

33220. Any person taking a bear must retain possession of the skin of the bear, and the portion of the bear’s head that includes both ears, during the open season for that bear and for 15 days thereafter, and must produce the skin and that portion of the head upon the demand of any officer authorized to enforce the provisions of this code.

Comment. Section 33220 restates former Fish and Game Code Section 4757 without substantive change.

Note. Proposed Section 33220 is intended to restate existing Fish and Game Code Section 4757 to improve its clarity, without changing its substantive effect. The existing provisions read as follows:

“4757. Any person taking any bear must retain in his possession during the open season thereon, and for 15 days thereafter, the skin and portion of the head bearing the ears, and must produce the skin and portion of the head upon the demand of any officer authorized to enforce the provisions of this code.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 33225. Killing bear held in captivity

33225. Except as authorized under a domesticated game breeder’s license, a bear kept in captivity may be killed only with the approval of the department, and pursuant to any regulation that the commission may adopt. The carcass of a bear kept in captivity may not be sold, and shall be disposed of as directed by the department.

Comment. Section 33225 continues the part of former Fish and Game Code Section 3006 applicable to bears without change.

CHAPTER 3. TAGS

§ 33300. Fee

33300. Any person 12 years of age or over who possesses a valid hunting license may obtain the number of bear tags corresponding to the number of bears that may legally be taken by one person during the current license year, upon payment of a fee as follows:

(a) For a resident of this state, a base fee of fifteen dollars (\$15) for each bear tag, adjusted under Section 3755.

(b) For a nonresident of this state, a base fee of one hundred five dollars (\$105) for each bear tag, adjusted under Section 3755.

Comment. Section 33300 restates former Fish and Game Code Section 4751 without substantive change.

Note. Proposed Section 33300 restates existing Fish and Game Code Section 4751 to improve its clarity, without changing its substantive effect. The second sentences of existing Section 4751(a) and (b) are deleted as superfluous. See proposed Section 31900 et seq.

Existing Section 4751 reads as follows:

“4751. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting license, may procure the number of bear tags corresponding to the number of bear that may legally be taken by one person during the current license year, upon payment of a base fee of fifteen dollars (\$15), as adjusted under Section 713, for each bear tag. Fee revenues pursuant to this subdivision shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.

(b) Any nonresident of this state, 12 years of age or over, who possesses a valid California hunting license, may procure the number of bear tags corresponding to the number of bear that may be legally taken by one person during the current license year upon payment of the base fee of one hundred five dollars (\$105), as adjusted under Section 713, for each bear tag. Fee revenues pursuant to this subdivision shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 33305. Deposit of fees

33305. All revenues from the sale of bear tags, including any fundraising tags, shall be deposited in the Big Game Management Account established in Section 31900 to permit separate accountability for the receipt and expenditure of these funds.

Comment. Section 33305 continues the part of the first sentence of former Fish and Game Code Section 3953(b) applicable to bears without substantive change.

§ 33310. Time period when tags are valid

33310. Bear tags are valid only during that portion of the current hunting license year in which a bear may be taken or possessed in any district.

Comment. Section 33310 continues former Fish and Game Code Section 4752 without substantive change.

§ 33315. Forfeiture of tags

33315. (a) Any person who is convicted of a violation of any provision of this code, or of any rule, regulation, or order made or adopted pursuant to this code, relating to bears, shall forfeit any bear tags issued to that person, and new bear tags shall not be issued to that person during the then current license year for hunting licenses.

(b) A person described in subdivision (a) shall not apply for bear tags for the following license year.

Comment. Section 33315 continues former Fish and Game Code Section 4754 without substantive change.

CHAPTER 4. POPULATION MANAGEMENT

§ 33400. Seasons

33400. (a) When adopting regulations pursuant to any authority otherwise vested in the commission by this code, the commission shall annually determine whether to continue, repeal, or amend regulations establishing hunting seasons for black bears. The determination shall include a review of factors that impact the health and viability of the black bear population.

(b) Prior to adopting a regulation authorizing a special hunting season for black bears for the purpose of curtailing property damage in any specified area, the commission shall comply with Title 4 (commencing with Section 10500) of Part 2 of Division 6.

Comment. Subdivision (a) of Section 33400 continues former Fish and Game Code Section 302 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 303 without substantive change.

CHAPTER 5. USE OF PARTS

§ 33450. Personal use of bear parts

33450. (a) The skin, hide, teeth, claws, or other parts of any bear lawfully taken and possessed for the period provided in Section 33220 may be tanned or otherwise used for personal use only.

(b) Notwithstanding the provisions of Section 33220, the skin, hide, teeth, claws, or other parts of any bear lawfully taken may be donated at any time to a veterans' organization or veterans' service committee for use by veterans for rehabilitation purposes. If the donation occurs during the retention period specified in Section 33220, the donor shall obtain a receipt and retain it for the donation for the duration of that period.

Comment. Subdivision (a) of Section 33450 continues the first sentence of former Fish and Game Code Section 4759 without substantive change.

Subdivision (b) restates the second and third sentences of former Fish and Game Code Section 4759 without substantive change.

Note. Subdivision (b) of proposed Section 33450 is intended to restate the second and third sentences of existing Fish and Game Code Section 4759 to improve its clarity, without changing its substantive effect. The existing provisions read as follows:

“Notwithstanding the provisions of Section 4757, the skin, hide, teeth, claws, or other parts of any bear lawfully taken may be donated any time to veterans' organizations or veterans' service committees for use by veterans for rehabilitation purposes. The donor shall obtain a receipt which shall be retained during the period stipulated by Section 4757.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of those sentences.

§ 33455. Commercial use of bear parts

33455. (a) Subject to the provisions of this code permitting the sale of domestically raised game mammals, it is unlawful to sell or purchase, or possess for sale, the meat, skin, hide, teeth, claws, or other parts of any bear in this state.

(b) For the purposes of subdivision (a), possession of more than one bear gall bladder is prima facie evidence that the bear gall bladders are possessed for sale.

(c) Nothing in this section prohibits a sale authorized pursuant to Section 10830.

Comment. Section 33455 continues former Fish and Game Code Section 4758 without substantive change.

§ 33460. Punishment for commercial use of bear parts

33460. (a) Notwithstanding Section 4400, subdivision (a) of Section 8400, or Section 11020, and except as otherwise provided in subdivision (c), the punishment for each violation of Section 33455 shall include both of the following:

(1) A fine of two hundred fifty dollars (\$250) for each bear part. As used in this paragraph, “bear part” means an individual part or group of like parts of any bear that the defendant knowingly and unlawfully sells, purchases, or possesses for sale. For the purposes of this paragraph, claws, paws, or teeth from a single bear that are knowingly purchased, sold, or possessed for sale with the intent that they be delivered to a single end user shall be considered a single part.

(2) An additional fine of not more than five thousand dollars (\$5,000), imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail for not more than one year, or both that fine and imprisonment.

(b) If a conviction for violation of Section 33455 is based on the possession of two bear gallbladders, and probation is granted or the execution or imposition of sentence is suspended, it shall be a condition of that probation or suspended sentence that a minimum term of 30 days be served in a county jail.

(c) A conviction for violation of Section 33455 based on possession of three or more bear gallbladders is subject to all of the following:

(1) The punishment for the offense shall include both of the following:

(A) The fine specified in paragraph (1) of subdivision (a).

(B) An additional fine of not more than ten thousand dollars (\$10,000), imprisonment in a county jail for not more than one year, or both that fine and imprisonment.

(2) If probation is granted or the execution or imposition of sentence is suspended, it shall be a condition of that probation or suspended sentence that a minimum term of three months be served in a county jail.

(d) Consecutive sentences shall be imposed for separate violations of Section 33455.

Comment. Section 33460 continues former Fish and Game Code Section 12005 without substantive change.

§ 33465. Punishment for sale or purchase if prior conviction

33465. In addition to any other penalty or fine imposed pursuant to this code, if a person is convicted of selling or purchasing parts of a bear in violation of Section 33455, and was previously convicted of one or more violations of selling or purchasing parts of a bear in violation of Section 33455, or of one or more offenses related to a taking in violation of Section 9500, 30505, 33205, 34200, or former Fish and Game Code Section 3700, separate from the offense before the court, the court may order as a condition of probation that the person attend the hunter education course designated in Section 10405, and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(a) If the person has one separate conviction, not more than 200 hours of community service.

(b) If the person has two or more separate convictions, not more than 300 hours of community service.

Comment. Section 33465 restates the part of former Fish and Game Code Section 12001.5 applicable to former Fish and Game Code Section 4758 without substantive change.

Note. Proposed Section 33465 is intended to restate the part of former Fish and Game Code Section 12001.5 applicable to former Fish and Game Code Section 4758 without substantive change, except to correct an apparent drafting error explained below.

Existing Section 12001.5 reads as follows:

“12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person has been convicted of one or more offenses that was a violation of a section listed in subdivision (b) separate from the offense before the court, the court may order as a condition of probation upon conviction of the offense before the court that is also a violation of a section listed in subdivision (b), that the person attend the hunter education course designated in Section 3051 and perform community service, preferably relating to natural resources if that type of community service is available, as follows:

(1) If the person has one separate conviction, not more than 200 hours of community service.

(2) If the person has two or more separate convictions, not more than 300 hours of community service.

(b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and 4750, and a sale or purchase of parts of a bear in Section 4758.”

As indicated, Section 12001.5(b) expressly applies to a violation of several identified sections, including “Section 3700,” a section that at the time Section 12001.5 was enacted generally prohibited the taking of a migratory game bird without possessing a required state duck *stamp* (the only form of special permission that at that time authorized the take of migratory game birds).

Subsequent to the enactment of Section 12001.5, the Department began alternatively authorizing the take of migratory game birds with an electronic validation, issued through the Department’s new Automated License Data System (ALDS). Thereafter, Section 3700.1, which mirrored the language of Section 3700 except to apply to the taking of a migratory game bird without possessing that validation, was added to the existing code. See 2001 Cal. Stat. ch. 112. However, notwithstanding the similarity of the language and apparent intent of the two sections

relating to the take of migratory game birds, a concurrent amendment was never made to Section 12001.5 to provide for application of that section to a violation of Section 3700.1.

The Commission believes this failure to amend Section 12001.5 was an inadvertent drafting error. Further, as Section 3700 was repealed in 2015 based on the discontinued use of duck stamps for hunting purposes (see 2015 Cal. Stat. ch. 683), Section 12001.5 now has *no* application to an unauthorized take of migratory game birds, on or after January 1, 2016. As the Commission believes this result would be contrary to what was intended by the Legislature, the provisions of the proposed law that continue existing Section 12001.5 would also apply to a violation of Section 3700.1.

The Commission invites comment on the restatement of the part of Section 12001.5 applicable to former Fish and Game Code Section 4758 in proposed Section 33465.

§ 33470. Use of signal-emitting device

33470. (a) In addition to any other penalties provided in this code, any person convicted of violating this code or any regulation adopted pursuant to this code while using a signal-emitting device in conjunction with the take of bear for the purpose of selling or trafficking in bear parts shall be subject to a fine of ten thousand dollars (\$10,000) per bear part. For purposes of this section, a “signal-emitting device” means any device capable of generating radio, cellular, satellite, or other signal transmission for purposes of providing communication or location information.

(b) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 31900 and shall be used for the big game management purposes described in that section.

(c) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 33470 continues former Fish and Game Code Section 12013.5 without substantive change.

Note. Under existing Fish and Game Code Section 12013.5, a person who violates any code provision relating to the take of bear may face significant additional monetary penalties if specified conditions are satisfied. The Commission finds the triggering conditions to be somewhat ambiguous. For example, is it sufficient that a person be carrying a cell phone to trigger the additional penalties, or must the signal-emitting device be used in some material way as part of the violation?

Moreover, the section provides for a separate \$10,000 penalty “per bear part,” but there is no rule for identifying what constitutes a distinct bear “part.” Compare existing Section 4758 (proposed Section 33455), which references specific parts of a bear. Further, what happens if a defendant is proven to have satisfied all the triggering requirements of Section 12013.5 (including having taken a bear for the purpose of selling or trafficking in bear parts), but has not yet divided the bear into parts at the time of arrest – is that defendant subject to any penalty?

The Commission invites comment on how this section is intended to be applied, and whether it could be usefully clarified.

CHAPTER 6. TAKE TO PROTECT PROPERTY

§ 33500. Take to protect property

33500. The following provisions do not apply to the taking of bear that is authorized to protect livestock, land, or property from damage or threatened damage from bear:

- (a) Section 33110.
- (b) Section 33210.
- (c) Section 33215.
- (d) Section 33220.
- (e) Section 33300.
- (f) Section 33310.
- (g) Section 33450.
- (h) Section 33455.
- (i) Section 33500.

Comment. Section 33500 continues former Fish and Game Code Section 4763 without substantive change.

§ 33505. Protection of livestock or crops

33505. (a) As used in this section, the terms “bear” and “pursue” have the same meanings as defined in Section 31500.

(b) Notwithstanding Section 31510, dogs that are guarding or protecting livestock or crops on property owned, leased, or rented by the owner of the dogs may be used to pursue a bear, if the dogs are maintained with, and remain in reasonable proximity to, the livestock or crops being guarded or protected.

Comment. Section 33505 continues the part of former Fish and Game Code Section 3960.6 applicable to bears without substantive change.

§ 33510. Bear killing livestock

33510. (a) A bear encountered in the act of inflicting injury to, molesting, or killing, livestock may be taken immediately by the owner of the livestock or the owner’s employee, subject to subdivision (e) and the following requirements:

(1) The taking shall be reported to the department no later than the next working day.

(2) The carcass of any bear taken is made available to the department.

(b) The department shall make a record of each report made pursuant to subdivision (a), and may have an employee of the department investigate the taking, or cause the taking to be investigated. Upon completion of an investigation, the investigator may, upon a finding that the requirements of this section have been met with respect to a bear taken under subdivision (a), issue a written statement to the person taking the bear, confirming that the requirements of this section have been met.

1 (c) Notwithstanding Section 33500, any part of a bear lawfully possessed
2 pursuant to this section is subject to Section 33455.

3 (d) Nothing in this section prohibits a federal, state, or county trapper from
4 killing or trapping a bear that is killing or molesting livestock.

5 **Comment.** Subdivision (a) of Section 33510 continues former Fish and Game Code Section
6 4181.1(a) without substantive change.

7 Subdivision (b) continues the part of former Fish and Game Code Section 4181.1(c) applicable
8 to bear without substantive change.

9 Subdivision (c) continues former Fish and Game Code Section 4181.1(d) without substantive
10 change.

11 Subdivision (d) continues former Fish and Game Code Section 4181.1(e) without substantive
12 change.

13 **§ 33515. Use of dogs**

14 33515. (a) As used in this section, the terms “bear” and “pursue” have the same
15 meanings as defined in Section 31500.

16 (b) Notwithstanding Section 31510, not more than three dogs may be used to
17 pursue a bear pursuant to a depredation permit issued by the department, if all of
18 the following conditions are met:

19 (1) The applicant demonstrates, in writing, that nonlethal and avoidance
20 measures were undertaken prior to requesting the depredation permit.

21 (2) The applicant demonstrates, in writing, the specific need for the use of dogs
22 in carrying out the depredation permit.

23 (3) The depredation permit authorizing the use of dogs is valid for the take of
24 one bear.

25 (4) The depredation permit authorizing the use of dogs is valid for a period not
26 to exceed 20 consecutive days.

27 (5) The depredation permit specifies the name and address of any dog handler
28 who will be utilized in the pursuit or taking.

29 (6) The dog handler has the depredation permit in his or her possession at all
30 times during the pursuit or taking.

31 (7) The dog handler does not pursue a bear more than one mile off the property
32 on which the depredation activity occurred.

33 (c) After any taking of a bear, the applicant is required to submit the skull to the
34 department as described in the department’s Black Bear Management Plan. No
35 part of any bear taken pursuant to a depredation permit may be sold, purchased, or
36 possessed for sale, as described in Section 33455.

37 (d) No holder of a depredation permit may solicit or receive compensation from
38 any person in exchange for carrying out the terms of the permit. For the purpose of
39 this subdivision, “compensation” means remuneration paid in money, property, or
40 anything else of value.

41 (e) The holder of a depredation permit, within 30 days of its issuance, shall
42 report to the department detailing the use of the permit and the results of any

pursuits, including information about bear pursued and whether the bear was or was not harmed, but not killed.

Comment. Section 33515 continues the part of former Fish and Game Code Section 3960.2 applicable to bears without substantive change.

Note. Existing Fish and Game Code Section 3690.2 and a number of other existing code sections refer to the issuance by the department of a “depredation permit.” However, there appear to be no sections in the existing code that either authorize the Department to issue such permits, or specify any process relating to the issuance of such permit.

The Commission invites comment on whether a provision should be added to the proposed law providing general authorization for the issuance of such permits.

§ 33520. Depredation permit

33520. (a) Except as provided in Section 33510, an owner or tenant of land or property that is being damaged or destroyed, or is in danger of being damaged or destroyed, by bear, may apply to the department for a permit to kill the bear causing or threatening the damage or destruction.

(b) Subject to the limitations in subdivision (e), the department, upon satisfactory evidence of actual or immediately threatened damage or destruction of land or property, shall issue a revocable permit for the taking and disposition of the responsible bear, under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions.

(c) Bear taken under a permit issued pursuant to subdivision (b) shall not be sold or shipped from the premises on which they are taken, except pursuant to instructions from the department.

(d) No iron-jawed, steel-jawed, or any other type of metal-jawed trap shall be used to take any bear pursuant to this section.

(e) The permit issued for taking bear pursuant to subdivision (a) shall contain the following facts:

(1) Why the issuance of the permit was necessary.

(2) What efforts were made to prevent the actual or immediately threatened damage or destruction without killing the bear or bears.

(3) What corrective actions should be implemented to prevent reoccurrence of the damage or destruction.

(f) It is unlawful for any person to violate the terms of any permit issued pursuant to this section.

Comment. Subdivisions (a) through (d) and (f) of Section 33520 restate the part of former Fish and Game Code Section 4181(a) applicable to bear without substantive change.

Subdivision (e) continues former Fish and Game Code Section 4181(b) without substantive change.

Note. Proposed Section 33520(a)-(e) and (g) is intended to restate the part of existing Fish and Game Code Section 4181(a) applicable to bear to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following facts:

- (1) Why the issuance of the permit was necessary.
- (2) What efforts were made to solve the problem without killing the bears.
- (3) What corrective actions should be implemented to prevent reoccurrence.
- (c)...
- (d)..."

The reference in existing Section 4181 to subdivision (d) of Section 4181 has not been continued in proposed Section 33520, as that provision does not apply to bears.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

CHAPTER 7. TAKE FOR SCIENTIFIC PURPOSES

§ 33600. Scientific research

33600. (a) As used in this section, the terms “bear” and “pursue” have the same meanings as defined in Section 31500.

(b) Notwithstanding Section 31510, the department may authorize qualified individuals, educational institutions, governmental agencies, or nongovernmental organizations to use dogs to pursue bears for the purpose of scientific research, provided that the research project is designed to do all of the following:

- (1) Contribute to knowledge of natural wildlife ecosystems.
- (2) Follow best practices and minimize disruptions in the lives and movements of bears and other wildlife, as well as impacts to the habitat while maintaining the applicant’s objectives.
- (3) Directly or indirectly support the sustainability and survival of bear populations and healthy ecosystems.
- (4) Exclude the intentional injury or killing of any bear.
- (5) Exclude the intentional relocation of any bear other than to areas suitable to them in the state. Any relocation shall comply with the requirements of Section 31610.

(c) Any research project authorized pursuant to subdivision (b) shall be undertaken pursuant to a memorandum of understanding between the department and the authorized research entity that addresses all of the following:

(1) Trapping and anesthetizing of the animals pursued, collection of diagnostic samples, attaching or surgically implanting monitoring or recognition devices or markings, and providing veterinary care or euthanasia, as required, for the health, safety, and humane treatment of the animals.

(2) Qualifications of onsite field supervisors necessary for carrying out authorized research procedures.

(3) Immediate reporting of any incidental mortality or injury to a bear as a result of authorized research activities. Reports of any incidental mortality or injury to a bear shall be made available to the public upon request.

(4) Filing of annual and final progress reports of research involving pursuit by dogs. Annual and final progress reports shall be made available to the public upon request.

(d) The department shall provide notice to the public of any bear research project authorized pursuant to subdivision (b) at least 30 days prior to its initiation, and, upon request, shall make available to the public copies of the memorandum of understanding between the department and the authorized research entity required pursuant to subdivision (c).

Comment. Section 33600 continues the part of former Fish and Game Code Section 3960.4 applicable to bears without substantive change.

Note. Existing Fish and Game Code Section 3960.4 authorizes the Department to use dogs to pursue bears *or* bobcats for scientific research, provided the research project meets certain conditions. Among those conditions are safeguards that generally protect against harm to any “bear *or* bobcat.” See Section 3960.4(b)(3), (4), (5) (which would be continued by proposed Section 33600(b)(3), (4), (5)).

Proposed Section 33600 would continue the provisions of Section 3960.4 that relate only to the pursuit and protection of bears, and all references to bobcats have therefore been deleted from the proposed section. (The provisions of Section 3960.4 that relate to the pursuit and protection of bobcats are continued elsewhere.)

The Commission invites comment on whether any of the deletions of the references to bobcats in this section would cause any substantive change in the meaning of any provision in Section 3960.4.

CHAPTER 8. MISCELLANEOUS PROVISIONS

§ 33650. Bears within San Bernardino and Riverside counties

33650. In any district or part of a district located within either San Bernardino or Riverside counties, a bear may be taken at any time with traps, if all of the following conditions are satisfied:

(a) The traps are set inside a good and substantial fence, as defined by Section 17121 of the Food and Agricultural Code.

(b) The fence surrounds one or more beehives.

(c) No part of the fence is at a distance greater than 50 yards from a beehive.

(d) A conspicuous sign is posted and maintained at each entrance to the enclosed premises, warning of the presence of the traps.

(e) No iron-jawed, steel-jawed, or any other type of metal-jawed trap is used.

Comment. Section 33650 continues former Fish and Game Code Section 4185 without substantive change.

TITLE 3. BEAVER

§ 33700. Fur-bearing mammal

33700. For the purposes of this code, a beaver is a fur-bearing mammal.

Comment. Section 33700 continues the part of former Fish and Game Code Section 4000 applicable to beavers without substantive change.

§ 33705. Provisions not exclusive

33705. The provisions of this title are not intended to be exclusive. Other provisions that govern beaver include, but are not limited to, Section 11010.

Comment. Section 33705 is new. It is added for drafting convenience.

§ 33710. Depredation permit

33710. (a) An owner or tenant of land or property that is being damaged or destroyed, or is in danger of being damaged or destroyed, by beaver, may apply to the department for a permit to kill the beaver causing or threatening the damage or destruction.

(b) The department, upon satisfactory evidence of actual or immediately threatened damage or destruction of land or property, shall issue a revocable permit for the taking and disposition of the responsible beaver, under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions.

(c) Beaver taken under a permit issued pursuant to subdivision (b) shall not be sold or shipped from the premises on which they are taken, except pursuant to instructions from the department.

(d) It is unlawful for any person to violate the terms of any permit issued pursuant to this section.

Comment. Section 33710 restates the part of former Fish and Game Code Section 4181(a) applicable to beaver without substantive change.

Note. Proposed Section 33710 is intended to restate the part of existing Fish and Game Code Section 4181(a) applicable to beaver to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission.

The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.”

The references in existing Section 4181 to existing Section 4181.1 and to subdivisions (b) and (d) of Section 4181 have not been continued in proposed Section 31110, as those provisions do not apply to beavers.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

TITLE 4. BOBCAT

CHAPTER 1. GENERAL PROVISIONS

§ 33750. Provisions not exclusive

33750. The provisions of this title are not intended to be exclusive. Other provisions that govern bobcats include, but are not limited to, the following provisions:

(a) Section 31510.

(b) Section 31550.

Comment. Section 33750 is new. It is added for drafting convenience.

§ 33755. Definition of “pursue”

33755. As used in this title, the term “pursue” has the same meaning as defined in Section 31500.

Comment. Section 33755 continues the parts of former Fish and Game Code Sections 3960.2, 3960.4, and 3960.6 applicable to the word “pursue” without substantive change.

CHAPTER 2. TAKE GENERALLY

§ 33800. Trapping on private land

33800. (a) Notwithstanding Section 9580 or any other provision of this code, on and after January 1, 2014, it shall be unlawful to trap a bobcat, or attempt to do so, on private land not belonging to the trapper without the express written consent of the owner of that property.

(b) The placing or possession of a trap or the possession of a bobcat on land is prima facie evidence of a violation of this section.

Comment. Section 33800 continues former Fish and Game Code Section 4155(d) without substantive change.

1 **§ 33805. Joshua Tree National Park**

2 33805. Beginning January 1, 2014, it shall be unlawful to trap a bobcat, or
3 attempt to do so, or to sell or export a bobcat taken in the area surrounding Joshua
4 Tree National Park, defined as follows: East and South of State Highway 62 from
5 the intersection of Interstate 10 to the intersection of State Highway 177; West of
6 State Highway 177 from the intersection of State Highway 62 to the intersection
7 with Interstate 10; North of Interstate 10 from State Highway 177 to State
8 Highway 62.

9 **Comment.** Section 33805 continues former Fish and Game Code Section 4155(a) without
10 change,

11 **§ 33810. Parks, preserves, and conservancies**

12 33810. (a) Through the commission's next regularly scheduled mammal
13 hunting and trapping rulemaking process occurring after January 1, 2014, the
14 commission shall amend its regulations to prohibit the trapping of bobcats
15 adjacent to the boundaries of each national or state park and national monument or
16 wildlife refuge in which bobcat trapping is prohibited.

17 (b) Commencing January 1, 2016, the commission shall consider whether to
18 prohibit bobcat trapping within, and adjacent to, preserves, state conservancies,
19 and any additional public or private conservation areas identified to the
20 commission by the public as warranting protection. The commission, as necessary,
21 shall amend its regulations through its next subsequently scheduled mammal
22 hunting and trapping rulemaking process to prohibit bobcat trapping in any area
23 determined by the commission to warrant protection.

24 (c) The commission shall delineate the boundaries of an area in which bobcat
25 trapping is prohibited pursuant to subdivisions (a) or (b) using readily identifiable
26 features, such as highways or other major roads, such as those delineated for
27 Joshua Tree National Park in **Section 10815**.

28 (d) The prohibition on the trapping of bobcats in the areas designated pursuant
29 to **Section 10815** and this section shall not apply to any of the following:

30 (1) The taking of a bobcat by an employee of the department acting in an official
31 capacity.

32 (2) The taking of a bobcat in accordance with the conditions of a scientific,
33 educational, or propagation permit pursuant to Section 9200 by the holder of that
34 permit.

35 (3) The lawful taking of a bobcat found to be injuring crops or other property,
36 pursuant to Section 32305, another provision of this code, or a regulation adopted
37 pursuant to this code.

38 **Comment.** Section 33810 continues former Fish and Game Code Section 4155(b)-(c) without
39 substantive change.

1 **§ 33815. Trapping fees**

2 33815. Consistent with the requirements of subdivision (b) of Section 11215,
3 the commission shall set trapping license fees and associated fees, including, but
4 not limited to, shipping tags required pursuant to Section 479 of Chapter 6 of
5 Subdivision 2 of Division 1 of Title 14 of the California Code of Regulations, for
6 the 2014–15 season, and any subsequent seasons in which bobcat trapping is
7 allowed, at the levels necessary to fully recover all reasonable administrative and
8 implementation costs of the department and the commission associated with the
9 trapping of bobcats in the state, including, but not limited to, enforcement costs.

10 **Comment.** Section 33815 continues former Fish and Game Code Section 4155(e) without
11 substantive change.

12 **§ 33820. Effect of chapter**

13 33820. This chapter does not limit the ability of the department or the
14 commission to impose additional requirements, restrictions, or prohibitions related
15 to the taking of bobcats, including a complete prohibition on the trapping of
16 bobcats pursuant to this code.

17 **Comment.** Section 33820 continues former Fish and Game Code Section 4155(f) without
18 substantive change.

19 CHAPTER 3. PURSUIT TO PROTECT PROPERTY

20 **§ 33900. Pursuit to protect livestock or crops**

21 33900. Notwithstanding Section 31510, dogs that are guarding or protecting
22 livestock or crops on property owned, leased, or rented by the owner of the dogs
23 may be used to pursue a bobcat, if the dogs are maintained with, and remain in
24 reasonable proximity to, the livestock or crops being guarded or protected.

25 **Comment.** Section 33900 continues the part of former Fish and Game Code Section 3960.6(b)
26 applicable to bobcats without substantive change.

27 **§ 33905. Depredation permit**

28 33905. (a) Notwithstanding Section 31510, three or fewer dogs may be used to
29 pursue a bobcat pursuant to a depredation permit issued by the department, if all of
30 the following conditions are met:

31 (1) The applicant demonstrates, in writing, that nonlethal and avoidance
32 measures were undertaken prior to requesting the depredation permit.

33 (2) The applicant demonstrates, in writing, the specific need for the use of dogs
34 in carrying out the depredation permit.

35 (3) The depredation permit authorizing the use of dogs is valid for the take of
36 one bobcat.

37 (4) The depredation permit authorizing the use of dogs is valid for a period not
38 to exceed 20 consecutive days.

1 (5) The depredation permit specifies the name and address of any dog handler
2 who will be utilized in the pursuit or taking.

3 (6) The dog handler has the depredation permit in his or her possession at all
4 times during the pursuit or taking.

5 (7) The dog handler does not pursue a bobcat more than one mile off the
6 property on which the depredation activity occurred.

7 (b) No holder of a depredation permit may solicit or receive compensation from
8 any person in exchange for carrying out the terms of the permit. For the purpose of
9 this subdivision, “compensation” means remuneration paid in money, property, or
10 anything else of value.

11 (c) The holder of a depredation permit, within 30 days of its issuance, shall
12 report to the department detailing the use of the permit and the results of any
13 pursuits, including information about bobcat pursued and whether the bobcat was
14 or was not harmed, but not killed.

15 **Comment.** Section 33905 continues the part of former Fish and Game Code Section 3960.2(b),
16 (d), and (e) applicable to bobcats without substantive change.

17 CHAPTER 4. PURSUIT FOR SCIENTIFIC PURPOSES

18 § 33950. Pursuit in furtherance of scientific research

19 33950. (a) Notwithstanding Section 31510, the department may authorize
20 qualified individuals, educational institutions, governmental agencies, or
21 nongovernmental organizations to use dogs to pursue bobcats for the purpose of
22 scientific research, provided that the research project is designed to do all of the
23 following:

24 (1) Contribute to knowledge of natural wildlife ecosystems.

25 (2) Follow best practices and minimize disruptions in the lives and movements
26 of bobcats and other wildlife, as well as impacts to the habitat while maintaining
27 the applicant’s objectives.

28 (3) Directly or indirectly support the sustainability and survival of bobcat
29 populations and healthy ecosystems.

30 (4) Exclude the intentional injury or killing of any bobcat.

31 (5) Exclude the intentional relocation of any bobcat other than to areas suitable
32 to them in the state. Any relocation shall comply with the requirements of Section
33 31610.

34 (b) Any research project authorized pursuant to subdivision (a) shall be
35 undertaken pursuant to a memorandum of understanding between the department
36 and the authorized research entity that addresses all of the following:

37 (1) Trapping and anesthetizing of the animals pursued, collection of diagnostic
38 samples, attaching or surgically implanting monitoring or recognition devices or
39 markings, and providing veterinary care or euthanasia, as required, for the health,
40 safety, and humane treatment of the animals.

(2) Qualifications of onsite field supervisors necessary for carrying out authorized research procedures.

(3) Immediate reporting of any incidental mortality or injury to a bobcat as a result of authorized research activities. Reports of any incidental mortality or injury to a bobcat shall be made available to the public upon request.

(4) Filing of annual and final progress reports of research involving pursuit by dogs. Annual and final progress reports shall be made available to the public upon request.

(c) The department shall provide notice to the public of any bobcat research project authorized pursuant to subdivision (a) at least 30 days prior to its initiation, and, upon request, shall make available to the public copies of the memorandum of understanding between the department and the authorized research entity required pursuant to subdivision (b).

Comment. Section 33950 continues the part of former Fish and Game Code Section 3960.4(b)-(d) applicable to bobcats without substantive change.

Note. Existing Fish and Game Code Section 3960.4 authorizes the Department to use dogs to pursue bears *or* bobcats for scientific research, provided the research project meets certain conditions. Among those conditions are safeguards that generally protect against harm to any “bear *or* bobcat.” See Section 3960.4(b)(3), (4), (5) (which would be continued by proposed Section 33950(a)(3), (4), and (5)).

Proposed Section 33950 would continue the provisions of Section 3960.4 that relate only to the pursuit and protection of bobcats, and all references to bears have therefore been deleted from the proposed section. (The provisions of Section 3960.4 that relate to the pursuit and protection of bears are continued elsewhere.)

The Commission invites comment on whether any of the deletions of the references to bears in this section would cause any substantive change in the meaning of any provision in Section 3960.4.

TITLE 5. BURRO

§ 34050. Provisions not exclusive

34050. The provisions of this title are not intended to be exclusive. Other provisions that govern burros include, but are not limited to, the following provisions:

(a) Section 505.

(b) Section 35815.

Comment. Section 34050 is new. It is added for drafting convenience.

§ 34055. Prohibitions

34055. (a) It is unlawful to kill, wound, capture, or have in possession any undomesticated burro, except as provided in Section 53074.5 of the Government Code.

(b) As used in this section, “undomesticated burro” means a wild burro or a burro that has not been tamed or domesticated for a period of three years after its

1 capture. The fact that a burro was killed, wounded, or captured on publicly owned
2 land, or on land owned by a person other than the person who killed, wounded, or
3 captured the burro is prima facie evidence that the burro was an undomesticated
4 burro at the time it was killed, wounded, or captured.

5 (c) Neither the commission nor any other department or agency has any power
6 to modify the provisions of this section by any order, rule, or regulation.

7 (d) The punishment for a violation of this section is a fine of not more than two
8 thousand dollars (\$2,000), imprisonment in a county jail for not more than one
9 year, or both the fine and imprisonment.

10 **Comment.** Subdivisions (a) through (c) of Section 34055 continue former Fish and Game
11 Code Section 4600 without substantive change.

12 Subdivision (d) continues former Fish and Game Code Section 12002(b)(3) without
13 substantive change.

14 **§ 34060. Burro sanctuary**

15 34060. The following is a burro sanctuary: All that area within the following
16 boundaries:

17 Beginning at the point at which the northern boundary line of Death Valley
18 National Monument intersects with the easterly boundary line of the State of
19 California;

20 Thence westerly along the northern boundary line of Death Valley National
21 Monument to the point of intersection with the line common to R. 40 and 41 E.,
22 Mount Diablo Meridian, being the NE. corner of Sec. 24, T. 10 S., R. 40 E., M. D.
23 B. & M.;

24 Thence northerly along the line common to R. 40 and 41 E., M. D. M., to the
25 point of intersection with the line common to T. 9 and 10 S., Mount Diablo Base,
26 being the NE. corner of Sec. 1, T. 10 S., R. 40 E., M. D. B. & M.;

27 Thence westerly along the line common to T. 9 and 10 S., M.D.B., and the
28 prolongation thereof, to the point of intersection with the most easterly boundary
29 line of the Inyo National Forest, as such boundary exists on the effective date of
30 this act, being the NW. corner of Sec. 6, T. 10 S., R. 37 E., M. D. B. & M.;

31 Thence southerly and easterly along the most easterly boundary line of the Inyo
32 National Forest to the most easterly southeast corner of said national forest;

33 Thence in a direct line in a generally southeasterly direction to the point at
34 which the center line of State Highway Route 127 (No. 190) intersects with the
35 line common to R. 41 and 42 E., M. D. M.;

36 Thence southerly along the line common to R. 41 and 42 E., M. D. M., to the
37 point of intersection with the line common to T. 20 and 21 S., M. D. B., being the
38 SW. corner of Sec. 31, T. 20 S., R. 42 E., M. D. B. & M.;

39 Thence westerly one-half mile, more or less, along the line common to T. 20 and
40 21 S., M. D. B., to the point of intersection with the line common to R. 41 and 42
41 E., M. D. M., being the NW. corner of Sec. 6, T. 21 S., R. 42 E., M. D. B. & M.;

1 Thence southerly along the line common to R. 41 and 42 E., M. D. M., to the
2 point of intersection with the boundary line between Inyo and San Bernardino
3 Counties;

4 Thence easterly along said county boundary line to the point of intersection with
5 the easterly boundary line of the State of California;

6 Thence northwesterly along said easterly boundary line of the State to the point
7 of beginning.

8 **Comment.** Section 34060 continues former Fish and Game Code Section 10930 without
9 change.

10 **§ 34065. Prohibited conduct in burro sanctuary**

11 34065. (a) Except as otherwise provided in Chapter 5 (commencing with Section
12 4600) of Part 3, Division 4 of this code it is unlawful to take, possess, harm,
13 molest, harass, or in any manner interfere with any burro that is in a burro
14 sanctuary described in Section 34060. Any violation of this subdivision a
15 misdemeanor.

16 (b) The provisions of this section, other than those relating to the taking and
17 possession of burros, do not apply to persons while lawfully on lands included
18 within the sanctuary and engaged in the business of raising cattle.

19 **Comment.** Section 34065 continues former Fish and Game Code Section 10931 without
20 substantive change.

21 **TITLE 6. DEER**

22 **CHAPTER 1. GENERAL PROVISIONS**

23 **§ 34100. Game mammal**

24 34100. For the purposes of this code, a deer (genus *Odocoileus*) is a game
25 mammal.

26 **Comment.** Section 34100 continues the part of former Fish and Game Code Section 3950(a)
27 applicable to deer without substantive change.

28 **§ 34105. Provisions not exclusive**

29 34105. The provisions of this title are not intended to be exclusive. Other
30 provisions that govern deer include, but are not limited to, the following
31 provisions:

32 (a) Section 720.

33 (b) Section 1000.

34 (c) Section 8630.

35 (d) Section 10500.

36 (e) Section 10700.

37 (f) Section 26550.

38 (g) Section 26070.

1 (h) Section 31555.

2 (i) Section 34535.

3 (j) Section **2720**.

4 (k) Section **3401**.

5 (l) Section **3406**.


6 (m) Section **3407**.

7 **Comment.** Section 34105 is new. It is added for drafting convenience.

8 **§ 34110. Retention of deer head**

9 34110. Any person taking a deer must retain possession of that portion of the
10 deer's head that in adult males normally bears the antlers, during the open season
11 for that deer and for 15 days thereafter, and must produce that portion of the head
12 upon the demand of any officer authorized to enforce the provisions of this code.

13 **Comment.** Section 34110 restates former Fish and Game Code Section 4302 without
14 substantive change.

15  **Note.** Proposed Section 34110 is intended to restate existing Fish and Game Code Section
16 4302 to clarify the meaning of that provision, without changing its substantive effect. The
17 existing provision reads as follows:

18 "Any person taking any deer shall retain in his possession during the open season thereon, and
19 for 15 days thereafter, that portion of the head which in adult males normally bears the antlers,
20 and shall produce the designated portion of the head upon the demand of any officer authorized to
21 enforce the provisions of this code."

22 **The Commission invites comment on whether the restatement would cause any**
23 **substantive change in the meaning of either section.**

24 **§ 34115. Killing deer held in captivity**

25 34115. Except as authorized under a domesticated game breeder's license, a
26 deer kept in captivity may be killed only with the approval of the department, and
27 pursuant to any regulation that the commission may adopt. The carcass of a deer
28 kept in captivity may not be sold, and shall be disposed of as directed by the
29 department.

30 **Comment.** Section 34115 continues the part of former Fish and Game Code Section 3006
31 applicable to deer without change.

32 **§ 34120. Transport out of state**

33 34120. It is unlawful to transport or carry a deer out of this state, except by the
34 holder of a nonresident hunting license or under a written permit issued by the
35 department.

36 **Comment.** Section 34120 continues the part of former Fish and Game Code Section 2350
37 applicable to deer without change.

38 **§ 34125. Transport into state**

39 34125. Deer may be transported into this state only when in accordance with the
40 law of the state in which the deer was taken, and when in accordance with the law

1 of this state and the regulations of the commission adopted pursuant to the law of
2 this state.

3 **Comment.** Section 34125 continues former Fish and Game Code Section 2355 without
4 substantive change.

5 CHAPTER 2. TAGS

6 § 34200. Required tag or permit

7 34200. (a) It is unlawful to take a deer without first obtaining a deer tag or
8 permit authorizing the taking of that deer.

9 (b) In addition to any other penalty or fine imposed pursuant to this code, if a
10 person is convicted of a violation of this section, and was previously convicted of
11 one or more offenses related to a taking in violation of this section, Section 9500,
12 Section 30505, Section 33205, or former Fish and Game Code Section 3700, or
13 related to the sale or purchase of a part of a bear in violation of Section 33455,
14 separate from the offense before the court, the court may order as a condition of
15 probation that the person attend the hunter education course designated in Section
16 10405. and perform community service, preferably relating to natural resources if
17 that type of community service is available, as follows:

18 (a) If the person has one separate conviction, not more than 200 hours of
19 community service.

20 (b) If the person has two or more separate convictions, not more than 300 hours
21 of community service.

22 **Comment.** Subdivision (a) of Section 34200 continues former Fish and Game Code Section
23 4330 without substantive change.

24 Subdivision (b) restates the part of former Fish and Game Code Section 12001.5 applicable to
25 former Fish and Game Code Section 4330 without substantive change.

26 **Note.** Proposed Section 34200(b) is intended to restate the part of former Fish and Game
27 Code Section 12001.5 applicable to former Fish and Game Code Section 3007 without
28 substantive change, except to correct an apparent drafting error explained below.

29 Existing Section 12001.5 reads as follows:

30 “12001.5. (a) In addition to any other penalty or fine imposed pursuant to this code, if a person
31 has been convicted of one or more offenses that was a violation of a section listed in subdivision
32 (b) separate from the offense before the court, the court may order as a condition of probation
33 upon conviction of the offense before the court that is also a violation of a section listed in
34 subdivision (b), that the person attend the hunter education course designated in Section 3051 and
35 perform community service, preferably relating to natural resources if that type of community
36 service is available, as follows:

37 (1) If the person has one separate conviction, not more than 200 hours of community service.

38 (2) If the person has two or more separate convictions, not more than 300 hours of community
39 service.

40 (b) This section applies to violations relating to a taking in Sections 3007, 3700, 4330, and
41 4750, and a sale or purchase of parts of a bear in Section 4758.”

42 As indicated, Section 12001.5(b) expressly applies to a violation of several identified sections,
43 including “Section 3700,” a section that at the time Section 12001.5 was enacted generally
44 prohibited the taking of a migratory game bird without possessing a required state duck *stamp*

(the only form of special permission that at that time authorized the take of migratory game birds).

Subsequent to the enactment of Section 12001.5, the Department began alternatively authorizing the take of migratory game birds with an electronic validation, issued through the Department's new Automated License Data System (ALDS). Thereafter, Section 3700.1, which mirrored the language of Section 3700 except to apply to the taking of a migratory game bird without possessing that validation, was added to the existing code. See 2001 Cal. Stat. ch. 112. However, notwithstanding the similarity of the language and apparent intent of the two sections relating to the take of migratory game birds, a concurrent amendment was never made to Section 12001.5 to provide for application of that section to a violation of Section 3700.1.

The Commission believes this failure to amend Section 12001.5 was an inadvertent drafting error. Further, as Section 3700 was repealed in 2015 based on the discontinued use of duck stamps for hunting purposes (see 2015 Cal. Stat. ch. 683), Section 12001.5 now has *no* application to an unauthorized take of migratory game birds, on or after January 1, 2016. As the Commission believes this result would be contrary to what was intended by the Legislature, the provisions of the proposed law that continue existing Section 12001.5 would also apply to a violation of Section 3700.1.

The Commission invites comment on the restatement of the part of Section 12001.5 applicable to former Fish and Game Code Section 4330 in proposed Section 34200.

§ 34205. Tagging of deer

34205. (a) A person issued a deer tag shall carry the tag while hunting deer.

(b) A person that kills a deer shall immediately fill out a deer tag issued to that person completely, legibly, and permanently, and cut out or punch out and completely remove notches or punch holes for the month and date of the kill. The deer tag shall then be immediately attached to the antlers of antlered deer or to the ear of any other deer, and shall be kept attached during the open season and for 15 days thereafter.

(c) A person that harvests a deer shall immediately notify the department of the harvesting, in a manner specified by the commission.

(d) Except as otherwise provided by this code or regulation adopted pursuant to this code, it is unlawful to possess any untagged deer.

Comment. Section 34205 continues former Fish and Game Code Section 4336 without substantive change.

Note. The Commission invites comment on whether a more common term could be substituted for the word "harvesting" as used in existing Fish and Game Code Section 4336.

§ 34210. Countersigning

34210. Any person legally killing a deer in this state shall have the tag for that deer countersigned by a person employed by the department, a person designated for that purpose by the commission, a notary public, a postmaster, a peace officer, or an officer authorized to administer oaths, before transporting the deer, except to transport the deer to the nearest person authorized to countersign the tag, on the route from where the deer is taken to that person.

Comment. Section 34210 restates former Fish and Game Code Section 4341 without substantive change.

1 **Note.** Proposed Section 34210 is intended to restate existing Fish and Game Code Section
2 4341 to improve its clarity, without changing its substantive effect. The existing provisions read
3 as follows:

4 “4341. Any person legally killing a deer in this state shall have the tag countersigned by a
5 person employed in the department, a person designated for this purpose by the commission, or
6 by a notary public, postmaster, postmistress, peace officer, or an officer authorized to administer
7 oaths, before transporting such deer, except for the purpose of taking it to the nearest person
8 authorized to countersign the tag, on the route being followed from the point where the deer is
9 taken.”

10 **The Commission invites comment on whether the restatement would cause any**
11 **substantive change in the meaning of the provision.**

12 **§ 34215. Issuance of tags**

13 34215. (a) The commission shall annually direct the department to authorize,
14 pursuant to Section 2945, the sale of not more than 10 deer tags for the purpose of
15 raising funds for programs and projects as set forth in Section 31905 and 31910.
16 All revenue from the sale of tags pursuant to this section shall be deposited in the
17 Big Game Management Account established in Section 31900.

18 (b) Tags issued pursuant to subdivision (a) may be sold to residents or
19 nonresidents of the state at auction or by any other method, and are not limited to
20 the fees prescribed by Section 33225.

21 (c) Funds received pursuant to this section shall augment, not supplant, any
22 other funds appropriated to the department for the preservation, restoration,
23 utilization, and management of deer. All revenue derived from the sale of tags
24 issued pursuant to subdivision (a) shall be remitted to the department by the seller.

25 **Comment.** Section 34215 continues former Fish and Game Code Section 4334 without
26 substantive change.

27 **§ 34220. Design and makeup of tag**

28 34220. The commission may determine the design and makeup of the deer tag
29 and prescribe the procedures for issuance and use.

30 **Comment.** Section 34220 continues former Fish and Game Code Section 4331 without
31 change.

32 **§ 34225. Fee**

33 34225. (a) Any person 12 years of age or over, who possesses a valid hunting
34 license, may obtain one tag for the taking of one deer by one person during the
35 current license year, upon payment of a fee as follows:

36 (1) For a resident of this state, a base fee of ten dollars (\$10) for the license year
37 beginning July 1, 1986, adjusted under Section 3755 for subsequent license years.

38 (2) For a nonresident of this state, a base fee of one hundred dollars (\$100) for
39 the license year beginning July 1, 1986, adjusted under Section 3755 for
40 subsequent license years.

41 (b) If provided in regulations adopted by the commission under Section 1000,
42 any person 12 years of age or over who possesses a deer tag for the current license

season may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of a fee as follows:

(1) For a resident of this state, a base fee of twelve dollars and fifty cents (\$12.50) for the license year beginning July 1, 1986, adjusted under Section 3755 for subsequent license years.

(2) For a nonresident of this state, a base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, adjusted under Section 3755 for subsequent license years.

Comment. Section 34225 restates former Fish and Game Code Section 4332(a)-(d) without substantive change.

Note. Proposed Section 34225 is intended to restate existing Fish and Game Code Section 4332(a)-(d) to clarify the meaning of that language, without changing its substantive effect. The existing provisions read as follows:

“4332. (a) Any resident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one tag for the taking of one deer by one person during the current license year, upon payment of the base fee of ten dollars (\$10) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(b) Any nonresident of this state, 12 years of age or over, who possesses a valid hunting license, may procure one tag for the taking of one deer by one person during the current license year, upon payment of the base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(c) If provided in regulations adopted by the commission under Section 200, any resident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of twelve dollars and fifty cents (\$12.50) for the license years beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.

(d) If provided in regulations adopted by the commission under Section 200, any nonresident of this state, 12 years of age or over, who possesses a deer tag may procure one additional deer tag for the taking of one additional deer during the current license season, upon payment of the base fee of one hundred dollars (\$100) for the license year beginning July 1, 1986, and the base fee as adjusted under Section 713 for subsequent license years.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 34230. Duration of tag

34230. A deer tag is valid only during that portion of the current hunting license year in which deer may be taken or possessed in any area.

Comment. Section 34230 continues former Fish and Game Code Section 4333 without substantive change.

§ 34235. Forfeiture of tags

34235. (a) Any person who is convicted of a violation of any provision of this code, or of any rule, regulation, or order made or adopted pursuant to this code, relating to deer, shall forfeit any deer tags issued to that person, and no new deer tags shall be issued to that person during the then current license year for hunting licenses.

(b) No person described in subdivision (a) may apply for deer tags for the following license year.

Comment. Section 34235 continues former Fish and Game Code Section 4340 without substantive change.

§ 34240. Deposit of fees

34240. Except as provided in Section 34245, all revenues from the sale of deer tags, including any fundraising tags, shall be deposited in the Big Game Management Account established in Section 31900 to permit separate accountability for the receipt and expenditure of these funds.

Comment. Section 34240 continues the part of the first sentence of former Fish and Game Code Section 3953(b) applicable to deer without substantive change.

Note. This provision appears to render existing Section 4332(e) superfluous, and that provision would not be continued in the proposed law. Existing Section 4332, which relates to the sale of deer tags, would generally be continued by proposed Section 34240. Existing Section 4332(e) reads as follows:

“4332. (e) All revenues pursuant to this section shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.”

The Commission invites comment on whether the discontinuation of existing Section 4332(e) in the proposed law is appropriate.

§ 34245. Sale of tag by nonprofit organization

34245. (a) A nonprofit organization designated by the department to assist in the sale of deer fundraising tags that are sold on behalf of the department for the purpose of raising funds for specified programs and projects, pursuant to subdivision (a) of Section 34215 is authorized to retain 5 percent of the amount of the sale price of the tag as a reasonable vendor fee.

(b) Within 30 days of the date of the sale, the selling nonprofit organization shall send the department 95 percent of the total auction sale price of the tag, with an itemized receipt showing the sale price and the 5-percent reduction retained by the nonprofit organization as a vendor’s fee.

Comment. Subdivision (a) of Section 34245 continues the part of former Fish and Game Code Section 709 applicable to deer without substantive change.

Subdivision (b) continues the part of the second sentence of former Fish and Game Code Section 3953(b) applicable to deer without change.

CHAPTER 3. BOW HUNTING

§ 34350. Archery season

34350. (a) In every area in which deer may lawfully be taken during the general open season, there shall be an archery season for the taking of deer with bow and arrow. The commission shall prescribe the season for each area, but with a minimum interval of three days immediately preceding the regular open season on deer in that area.

(b) Except as provided in subdivision (c), a person taking or attempting to take deer during the archery season shall neither carry nor have under the person's immediate control any kind of firearm.

(c) A peace officer listed in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, whether active or honorably retired, may carry a firearm capable of being concealed on the person while engaged in the taking of deer with bow and arrow in accordance with subdivision (a), but shall not take or attempt to take deer with the firearm.

Comment. Section 34350 continues former Fish and Game Code Section 4370 without substantive change.

§ 34355. Taking with bow and arrow

34355. The provisions of this code relating to deer shall be applicable to the taking of deer with a bow and arrow.

Comment. Section 34355 continues former Fish and Game Code Section 4371 without substantive change.

CHAPTER 4. USE OF PARTS

§ 34400. Commercial use of deer meat

34400. (a) As used in this section, "deer" includes any animal of the family Cervidae.

(b) Except as otherwise provided in this section, it is unlawful to sell, purchase, or transport for the purpose of sale any deer meat in this state, whether fresh, smoked, canned, or preserved by any means.

(c) The prohibition in subdivision (a) does not apply to the following:

(1) Conduct authorized by provisions of this code permitting the sale of domestically raised game mammals.

(2) Fallow deer meat processed by a slaughterer in accordance with Chapter 4 (commencing with Section 18650) of, and Chapter 4.1 (commencing with Section 18940) of, Part 3 of Division 9 of the Food and Agricultural Code.

(3) Deer meat imported into this state from a foreign country for the purpose of preparing and selling for human consumption a product commonly known and properly labeled as venison jerky, deer jerky, venison salami, or deer salami.

Comment. Subdivision (a) of Section 34400 continues former Fish and Game Code Section 4301(b) without change.

Subdivisions (b) and (c) restate the first sentence of former Fish and Game Code Section 4301(a) without substantive change.

Notes. (1) Subdivisions (b)-(c) of proposed Section 34400 are intended to restate the first sentence of existing Fish and Game Code Sections 4301(a) to clarify the meaning of that sentence, without changing its substantive effect. The existing sentence reads as follows:

"Subject to the provisions of this code permitting the sale of domestically raised game mammals, it is unlawful to sell or purchase, or transport for the purpose of sale, any deer meat in this state whether fresh, smoked, canned, or preserved by any means, except fallow deer meat

processed by a slaughterer in accordance with Chapter 4 (commencing with Section 18650) of, and Chapter 4.1 (commencing with Section 18940) of, Part 3 of Division 9 of the Food and Agricultural Code, and except that deer meat may be imported into this state from a foreign country for the purpose of processing (manufacturing) and selling a product commonly known as venison or deer jerky or venison or deer salami, properly labeled as such, for human consumption.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of either section.

(2) Existing Fish and Game Code Section 4301(b) (which would be continued by proposed Section 34400(a)) provides a definition of the term “deer” as used in existing Section 4301. However, the term “deer” appears in many other sections of the existing Fish and Game Code, with no corresponding definition. See, e.g., existing Sections 450-460, 4302-4304. The inclusion of a definition of the term applicable only to one section of the code creates an inference that the term is intended to have some slightly different meaning in all other sections.

The Commission invites comment on whether the definition of “deer” in Section 4301 should be made applicable to the code generally, and included with the general definitions in the first division of the proposed law.

§ 34405. Importation of deer meat

34405. (a) As used in this section, “deer” includes any animal of the family Cervidae.

(b) All deer meat imported into this state shall meet all of the sanitary and inspection requirements for wholesomeness, except an antemortem inspection, but including a postmortem inspection, as required for other meat imported for human consumption.

(c) Imported deer meat shall be in an identifiable condition and accompanied by a bill of lading, showing the name of the consignor, the consignee, and the weight of the deer meat shipped. A copy of the bill of lading shall be delivered to the nearest office of the department either prior to, or not later than, two days from the date of receipt of the deer meat.

(d) No deer meat imported into this state may leave the premises of the original consignee unless one of the following occurs:

(1) Written permission to take the meat from the premises is received from the department.

(2) The meat is processed into the form of the product commonly known as jerky or salami.

Comment. Subdivision (a) of Section 34405 continues former Fish and Game Code Section 4301(b) without change.

Subdivisions (b)-(d) continue the second through fourth sentences of former Fish and Game Code Section 4301(a) without substantive change.

§ 34410. Use of skin or hide of deer

34410. (a) The skin or hide of any deer lawfully taken may be sold, purchased, tanned, or manufactured into articles for sale.

(b) Skins or hides of deer lawfully taken may be donated at any time to veterans' organizations or veterans' service committees for use by veterans for rehabilitation purposes.

Comment. Section 34410 continues former Fish and Game Code Section 4303 without substantive change.

§ 34415. Needless waste of deer

34415. (a) Except as provided in subdivision (b), no person shall do any of the following:

(1) Take a deer and separate from its carcass only the head, hide, antlers, or horns.

(2) Allow a deer in that person's possession, or any portion of the deer's flesh that is usually eaten by humans, to be needlessly wasted through carelessness or neglect.

(b) The prohibitions in subdivision (a) do not apply to a deer taken pursuant to Section 32305.

Comment. Section 34415 restates the part of former Fish and Game Code Section 4304 applicable to deer without substantive change.

Notes. (1) Proposed Section 34415 is intended to restate the part of existing Fish and Game Code Section 4304 applicable to deer to improve its clarity, without changing its substantive effect. The existing section reads as follows:

"4304. No person shall at any time capture or destroy any deer and detach or remove from the carcass only the head, hide, antlers, or horns; nor shall any person at any time leave through carelessness or neglect any game mammal or game bird which is in his possession, or any portion of the flesh thereof usually eaten by humans, to go needlessly to waste. The provisions of this section shall not apply to game mammals taken under the authority of Sections 4152 and 4183 of this code."

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Fish and Game Code Section 4183, which is cross-referenced in existing Section 4304, was repealed in 1984. 1984 Cal. Stat. ch. 1365. The repealed section related to taking bears that kill livestock.

(3) The first clause of existing Section 4304 (which would be continued by proposed Section 34415(a)(1)) appears inconsistent with existing Sections 4302 (which would be continued by proposed Section 34110) and 4303 (which would be continued by proposed Section 34410), as the two latter sections both clearly contemplate separating parts of a deer from its body.

The Commission invites comment on this issue.

CHAPTER 5. GAME REFUGES

§ 34450. Opening of game refuge for taking of deer

34450. Before the commission opens any game refuge for the taking of deer, a public hearing shall be held at which at least one member of the commission shall be in attendance and such officers and employees of the department as are deemed necessary or are requested by interested parties, notice of which has been

published at least once and at least 30 days prior to the hearing in a newspaper of general circulation which is printed and published in the county, or one of the counties, in which the area lies. If there is no newspaper of general circulation in any such county, the notice shall be published in such newspaper of general circulation as the commission determines will be most likely to give notice to the inhabitants of the area and such determination by the commission shall be final and conclusive.

Comment. Section 34450 continues former Fish and Game Code Section 10501 without change.

CHAPTER 6. POPULATION MANAGEMENT

§ 34500. Declaration of legislative policy

34500. It is hereby declared to be the policy of the Legislature to encourage the conservation, restoration, maintenance, and utilization of California's wild deer populations. Such conservation shall be in accordance with the principles of conservation of wildlife resources set forth in **Section 1801** and in accordance with the objectives and elements stated in "A Plan for California Deer," State of California, Department of Fish and Game (1976)."

Comment. Section 34500 continues former Fish and Game Code Section 450 without substantive change.

§ 34505. Deer herd management units

34505. The department shall designate deer herd management units and designate a manager for each unit. A unit may encompass a single deer herd or a group of deer herds having similar management and habitat requirements and characteristics. The boundaries of units need not follow county boundary lines, unless it is appropriate that they do so.

Comment. Section 34505 continues former Fish and Game Code Section 452 without substantive change.

§ 34510. Management unit plans

34510. (a) The department shall develop plans for deer herd management units. The objectives of the plans shall be the restoration and maintenance of healthy deer herds in the wild, and the provision of high quality and diversified use of deer in California.

(b) The management plans shall contain the following program elements:

(1) Document existing information on deer herd management units and programs, to obtain information that may be needed.

(2) Develop programs to maintain and increase the quality of deer habitat statewide that emphasize cooperative action between the department and the appropriate land management entities, both public and private. Emphasis shall be

1 directed towards identifying critical deer habitat areas and the maintenance and
2 management of such areas.

3 (3) Develop programs to reduce natural mortalities where reduction may be
4 critical to meeting deer herd plan objectives.

5 (4) Develop programs to decrease the illegal taking of deer through modern law
6 enforcement methods, supported by public and private cooperative efforts.

7 (5) Develop diversified recreational use programs, including both hunting and
8 non-hunting uses, consistent with basic individual deer herd management unit
9 capabilities.

10 (c) Deer herd management unit plans shall be reviewed annually and shall be the
11 basis for department recommendations to the commission pursuant to Sections
12 34515, 34520, and 34530.

13 **Comment.** Subdivision (a) of Section 34510 continues former Fish and Game Code Section
14 453 without substantive change.

15 Subdivision (b) continues former Fish and Game Code Section 454 without substantive
16 change.

17 Subdivision (c) continues former Fish and Game Code Section 455 without substantive change.

18 **§ 34515. Biennial report to Legislature and Commission**

19 34515. (a) The department shall biennially report to the Legislature and to the
20 commission on the progress being made toward restoration and maintenance of
21 California's deer herds.

22 (b) The report shall include all of the following:

23 (1) A description of ongoing program activities relating to deer habitat,
24 particularly those addressing problems identifying and preserving critical deer
25 habitat areas.

26 (2) A statement of the amount of revenue derived from the sale of deer tags
27 during the two previous fiscal years.

28 (3) A list of expenditures during the two previous fiscal years.

29 (4) A list of proposed expenditures in the current fiscal year.

30 (5) A report of general benefits that have accrued to deer resources as a result of
31 programs developed pursuant to Section 34510.

32 **Comment.** Subdivision (a) of Section 34515 continues the first sentence of former Fish and
33 Game Code Section 456 without substantive change. The second sentence of the section is
34 discontinued as obsolete.

35 Subdivision (b) restates the third sentence of former Fish and Game Code Section 456 without
36 substantive change.

37 **Notes.** (1) The Department of Fish and Wildlife has suggested that the report required by this
38 section should be repealed as obsolete. The Commission invites comment on that suggestion.

39 (2) Subdivision (b) of proposed Section 34515 is intended to restate the third sentence of
40 Section 456 to improve its clarity, without changing its substantive effect. The existing provision
41 reads as follows:

42 "The report shall include program activities regarding deer habitat, particularly addressing
43 problems dealing with identification and preservation of critical deer habitat areas; the amount of
44 revenue derived from the sale of deer tags during the two previous fiscal years; a list of

expenditures during the two previous fiscal years and proposed expenditures during the current fiscal year; and a report of general benefits accrued to the deer resources as a result of the program.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of that provision.

§ 34520. Annual recommendations by department

34520. (a) Not later than December 15 of each year, the department shall determine its proposed recommendations to the commission relating to the management of deer, including its recommendations as to whether any antlerless deer hunts should be ordered.

(b) The recommendations shall include all of the following:

(1) The number, if any, of antlerless deer that should be taken in particular deer management units.

(2) Proposed dates for any recommended taking.

(3) The number of permits proposed for each management unit.

(4) Whether the permits should be either-sex permits.

Comment. Section 34520 restates former Fish and Game Code Section 457 without substantive change.

Note. Proposed Section 34520 is intended to restate existing Fish and Game Code Section 457 to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“The department shall determine prior to December 15 of each year its proposed recommendations to the commission, including its recommendations as to whether any antlerless deer hunts should be ordered. The recommendations of the department shall include the number, if any, of antlerless deer that should be taken in units, whether the permits should be either-sex permits, the proposed dates for each such taking, and the number of permits proposed for each unit.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of that provision.

§ 34525. Affected counties

34525. (a) Not later than December 15 of each year, the department shall provide notice of its proposed recommendations under Section 34520 to the board of supervisors of each county affected by a recommendation, by certified mail.

(b) Not later than the February 1 next following the department’s notice, the board of supervisors of any affected county may elect to hold a public hearing on the department’s proposed recommendations. The director or the director’s representative shall attend all hearings held pursuant to this subdivision.

(c) Not later than the February 1 next following the department’s notice, the board of supervisors of any affected county that has held a public hearing pursuant to subdivision (b) may by resolution object to the proposed recommendations of the department, or may by resolution determine that the proposed recommendations should be modified and state the necessary modifications. A resolution objecting to or stating necessary modifications of the proposed

1 recommendations shall be based on testimony and information presented at a
2 hearing conducted pursuant to subdivision (b), or presented to the board of
3 supervisors at its meeting to consider the resolution.

4 (d) The board of supervisors of any affected county may, by resolution, elect not
5 to exercise the rights conferred by this section.

6 (e) The department shall not recommend to the commission, and the commission
7 shall not authorize, the taking of antlerless deer in an affected county, if the board
8 of supervisors of that county submits a resolution pursuant to subdivision (c)
9 objecting to that taking.

10 (f) If a board of supervisors of an affected county submits a resolution
11 determining that a department's proposed recommendation relating to the taking
12 of antlerless deer should be modified for that county, the department and the
13 commission shall do one of the following:

14 (1) The department shall modify its recommendations and the commission shall
15 modify its orders to incorporate the modifications determined to be necessary by
16 the county board of supervisors.

17 (2) The department shall not recommend, and the commission shall not
18 authorize, the taking of antlerless deer in that county.

19 (f) This section applies only to the counties of, and to those districts or parts of
20 districts in, Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Alpine,
21 Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt,
22 Imperial, Inyo, Lake, Madera, Mariposa, Mendocino, Merced, Mono, Monterey,
23 Napa, Nevada, Orange, Placer, Riverside, San Luis Obispo, Santa Barbara, Santa
24 Clara, Tehama, Tuolumne, Yolo, and Yuba Counties.

25 **Comment.** Section 34525 combines and restates former Fish and Game Code Sections 458 and
26 459 without substantive change.

27 **Note.** Proposed Section 10030 is intended to combine and restate existing Fish and Game
28 Code Sections 458 and 459 to clarify the meaning of those sections, without changing their
29 substantive effect. The existing sections read as follows:

30 "458. The department not later than December 15 shall notify, by certified mail, the board of
31 supervisors of each county affected of the details of its recommendations under Section 457.

32 The board of supervisors of any affected county may elect to hold a public hearing on the
33 proposed recommendations of the department. Any such hearing shall be held prior to February 1.
34 The director or his or her representative shall attend the hearing.

35 The board of supervisors of any county to which this section is applicable may, by resolution,
36 elect not to exercise the rights conferred by this section.

37 This section applies only to the counties of, and to those districts or parts of districts in,
38 Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Sierra, Alpine, Amador, Butte, Calaveras,
39 Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Madera, Mariposa,
40 Mendocino, Merced, Mono, Monterey, Napa, Nevada, Orange, Placer, Riverside, San Luis
41 Obispo, Santa Barbara, Santa Clara, Tehama, Tuolumne, Yolo, and Yuba Counties.

42 459. The board of supervisors of any county specified in Section 458 which has held a public
43 hearing pursuant to Section 458 may, not later than February 1, by resolution, object to the
44 proposed recommendations of the department or may, by resolution, determine that the proposed
45 recommendation should be modified, setting forth the necessary modifications.

1 A resolution objecting to, or setting forth modifications of, the proposed recommendations
2 shall be based upon the testimony and information presented at the hearing or presented to the
3 board of supervisors at its meeting to consider the resolution.

4 The department shall not recommend to the commission, and the commission shall not
5 authorize, the taking of antlerless deer in a county specified in Section 458 if it has received from
6 the board of supervisors of that county a resolution objecting to that taking. If a board of
7 supervisors of a county has submitted a resolution determining that the department's proposed
8 recommendations on the taking of antlerless deer should be modified for that county, the
9 department shall either so modify its recommendations and the commission shall so modify its
10 orders or the department shall not recommend, and the commission shall not authorize, the taking
11 of antlerless deer in that county."

12 **The Commission invites comment on whether the restatement would cause any**
13 **substantive change in the meaning of either section.**

14 (2) Existing Fish and Game Code Section 459 does not address the manner, timing, or recipient
15 of a resolution described in the section that must be "submitted" by a county's board of
16 supervisors, or "received" by an undesignated entity.

17 **The Commission invites comment on whether these matters should be clarified in the**
18 **proposed law.**

19 **§ 34530. Department recommendations relating to deer hunting**

20 34530. (a) Prior to each meeting of the commission at which the commission
21 considers the regulation of deer and takes action pursuant to paragraph (1) of
22 subdivision (a) of Section 1105, the department shall recommend to the
23 commission the deer herd management units to be placed under a general deer
24 hunting season.

25 (b) At the same time, the department shall do all of the following:

26 (1) Recommend, subject to the provisions of Section 34525, whether any
27 antlerless deer should be taken, and if so in which deer herd management units.

28 (2) If in the judgment of the department there are deer herd management units in
29 which hunting pressure would adversely affect the deer herd, impair the hunting
30 experience, or endanger the public safety, recommend those deer herd
31 management units where hunter numbers should be restricted, and those which
32 should be removed from the general deer hunting season designation.

33 (3) Inform the commission of the condition of each deer herd management unit.

34 (4) Submit its recommendations determined in accordance with the provisions of
35 Section 34525.

36 (5) Recommend the establishment of any hunter-restricted quota units, if
37 needed, and the number of the quota and manner in which the quota permits
38 should be issued.

39 (d) Upon receipt of the recommendations and information required by this
40 section, the commission shall make that material and its determinations regarding
41 proposed regulations known to the public.

42 (e) As used in this section, "general deer hunting season" means the annual
43 season for the area in question as is set by the commission under its general
44 regulatory powers, or set by statute, for the taking of male deer.

Comment. Subdivisions (a) through (d) of Section 34530 restate former Fish and Game Code Section 460 without substantive change.

Subdivision (e) continues former Fish and Game Code Section 451 without substantive change.

Notes. (1) Proposed Section 34530(a)-(d) is intended to restate existing Fish and Game Code Section 460 to improve its clarity, without changing its substantive effect. The existing section reads as follows:

“460. Prior to each meeting of the commission at which the commission considers the regulation of deer and takes action pursuant to paragraph (1) of subdivision (a) of Section 255, the department shall recommend to the commission those deer herd units to be placed under a general deer hunting season. At the same time, the department shall recommend to the commission, subject to the provisions of Sections 458 and 459, whether any antlerless deer should be taken and in what deer herd units antlerless deer are to be taken. If in the judgment of the department there are deer herd units in which hunting pressure would adversely affect the deer herd, impair the hunting experience, or endanger the public safety, the department shall also recommend to the commission those deer herd units where hunter numbers should be restricted and which should be removed from the general deer hunting season designation. The department shall inform the commission of the condition of each deer herd unit. Upon receipt of the recommendations and information required in this section, the commission shall make that material known to the public and its determinations regarding proposed regulations. The recommendations of the department shall, in accordance with the provisions of Sections 458 and 459, include the number, if any, of antlerless deer that should be taken in deer herd units, whether the permits should be either-sex permits, the proposed dates for the taking, and the number of permits proposed for each deer herd unit. At the same time, the department shall recommend the establishment of any hunter-restricted quota units, if needed, and the number of the quota and manner in which the quota permits should be issued.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of existing Section 460.

(2) Although existing Section 451 (which would be continued by proposed Section 34530(e) defines the term “general deer hunting season” as used in the chapter in which Section 451 appears, the term is only used in one section of that chapter, existing Section 460 (which would be continued by proposed Section 10035(a)-(d). In proposed Section 34530(e), the reference to “chapter” is therefore revised to refer to this “section.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of existing Section 451.

§ 34535. Feeding of deer

34535. (a) The department shall provide for the feeding of deer wherever the director finds that natural forage is unavailable therefor due to excessive snow. The times, extent, and manner of such feeding shall be prescribed by the director. In carrying out the provisions of this section neither the department nor the director shall be bound by any policy determination or regulation of the commission, it being the purpose of this section to commit to the independent discretion of the director all matters within the purview of this section.

(b) No deer shall be fed pursuant to this section upon any privately owned land without the consent of the owner or person in lawful possession of such land.

Comment. Section 34535 continues former Fish and Game Code Section 1503 without change.

CHAPTER 7. TAKE TO PROTECT PROPERTY

§ 34600. Permit to take deer

34600. (a) Any owner or tenant of land or property that is being damaged or destroyed or is in immediate danger of being damaged or destroyed by deer may apply to the department for a permit to kill those deer. The department, upon satisfactory evidence of actual or immediately threatened damage or destruction shall, pursuant to regulations adopted by the commission, issue a revocable permit for the taking and disposition of the responsible deer, for a designated period not to exceed 60 days.

(b) The regulations of the commission shall provide for the types of weapons that may be used to kill deer pursuant to subdivision (a), and shall also provide for the following:

(1) The weapons provided for shall be those that will ensure humane killing.

(2) The regulations shall provide for the use of a sufficient variety of weapons to permit the designation of particular types to be used in any particular locality commensurate with the need to protect persons and property.

(3) Firearms using .22-caliber rimfire cartridges may be used only when authorized by the director or his designee.

(4) No pistols shall be used.

(5) Rifle ammunition used shall have expanding bullets.

(6) Shotgun ammunition shall have only single slugs, or, if authorized by the department, 0 or 00 buckshot.

(c) The caliber and type of weapon to be used by each permittee shall be specified in each permit by the officer issuing the permit, who shall take into consideration the location of the area, the necessity for clean kills, the safety factor, local firearms ordinances, and other factors that apply.

(d) At the time a permit is issued pursuant to subdivision (a), the department shall issue tags similar to those provided for in Section 34220. The permittee shall carry the tags while hunting the deer for which the permit was issued, and upon killing any deer, shall immediately do all of the following:

(1) Fill out both parts of the tag, and clearly punch out the date of the kill.

(2) Immediately attach one part of the completed tag to the antlers of antlered deer, or to the ear of any other deer, and keep that part of the tag attached to the deer until 10 days after the permit has expired.

(3) Obtain a countersignature on the other part of the tag pursuant to Section 34210.

(4) Send the countersigned part of the tag to the department.

(e) A permit issued pursuant to this section may be renewed only after a finding by the department that further damage has occurred or will occur, unless that permit is renewed. A person seeking renewal of a permit pursuant to this subdivision shall do all of the following:

(1) Account for all tags previously issued with all prior permits.

(2) If any previously issued tags are unused, show either of the following:

(A) That any deer previously killed pursuant to a previously issued permit could not reasonably have been tagged.

(B) Why the offending deer were not killed within the time allotted for that killing, and why the killing would be accomplished under a new time period.

Comment. Section 34600 restates former Fish and Game Code Section 4181.5 without substantive change.

Note. Proposed Section 34600 is intended to restate existing Fish and Game Code Section 4181.5 to clarify the meaning of that section, without changing its substantive effect. The existing section reads as follows:

“4181.5. (a) Any owner or tenant of land or property that is being damaged or destroyed or is in immediate danger of being damaged or destroyed by deer may apply to the department for a permit to kill those deer. The department, upon satisfactory evidence of that damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of those deer for a designated period not to exceed 60 days under regulations promulgated by the commission.

(b) The regulations of the commission shall include provisions concerning the type of weapons to be used to kill the deer. The weapons shall be those as will ensure humane killing, but the regulations of the commission shall provide for the use of a sufficient variety of weapons to permit the designation of particular types to be used in any particular locality commensurate with the need to protect persons and property. Firearms using .22-caliber rimfire cartridges may be used only when authorized by the director or his designee. No pistols shall be used. The caliber and type of weapon to be used by each permittee shall be specified in each permit by the issuing officer who shall take into consideration the location of the area, the necessity for clean kills, the safety factor, local firearms ordinances, and other factors that apply. Rifle ammunition used shall have expanding bullets; shotgun ammunition shall have only single slugs, or, if authorized by the department, 0 or 00 buckshot.

(c) The department shall issue tags similar to those provided for in Section 4331 at the same time the permit is issued. A permittee under this section shall carry the tags while hunting deer, and upon the killing of any deer, shall immediately fill out both parts of the tag and punch out clearly the date of the kill. One part of the tag shall be immediately attached to the antlers of antlered deer or to the ear of any other deer and kept attached until 10 days after the permit has expired. The other part of the tag shall be immediately sent to the department after it has been countersigned by any person authorized by Section 4341.

(d) A permit issued pursuant to this section may be renewed only after a finding by the department that further damage has occurred or will occur unless that permit is renewed. A person seeking renewal of the permit shall account for all prior tags issued at the time he or she received any prior permits, and if any tags are unused, he or she shall show either that any deer killed could not reasonably be tagged or why the killing was not accomplished within the allotted time and why that killing would be accomplished under a new time period.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of either section.

§ 34605. Access by licensed hunters for depredator control

34605. (a) If a landowner or tenant applies for a permit under Section 34600 to take deer, the department shall inform the applicant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to **Article 3 (commencing with Section 1570) of Chapter 5 of Division 2** to control deer.

(b) The commission, in lieu of a permit described in Section 34600, and with the consent of, or upon the request of, the landowner or tenant, may pursuant to appropriate regulation authorize the issuance of permits to persons holding valid hunting licenses to take deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

Comment. Section 34605 restates the part of former Fish and Game Code Section 4188 applicable to deer without substantive change.

Note. Proposed Section 34605 is intended to restate the part of existing Fish and Game Code Section 4188 applicable to deer to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

(b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

CHAPTER 7. ENHANCED PENALTIES

§ 34700. Enhanced penalty for specified violations

34700. (a) Notwithstanding Section 4400 or subdivision (a) of Section 8400, the punishment for any person who knowingly violated and has been convicted of any of the following provisions where the violation involved a trophy deer shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment:

(1) Section 8015, if the person took a deer outside the established season.

(2) Section 8125.

(3) Section 8300, if the person failed to procure the required license or tag prior to taking a deer.

(4) Section 34415.

(5) Section 257.5 of Title 14 of the California Code of Regulations.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of antelope or parts of antelope.

(c) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 31900 and shall be used for the big game management purposes described in that section.

(d) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 34700 continues the part of former Fish and Game Code Section 12013.3 applicable to deer without substantive change.

TITLE 7. ELK

CHAPTER 1. GENERAL PROVISIONS

§ 34800. Game mammal

34800. For the purposes of this code, an elk (genus *Cervus*) is a game mammal.

Comment. Section 34800 continues the part of former Fish and Game Code Section 3950(a) applicable to elk without substantive change.

§ 34805. Provisions not exclusive

34805. The provisions of this title are not intended to be exclusive. Other provisions that govern elk include, but are not limited to, the following provisions:

(a) Section 8630.

(b) Section 10700.

(c) Section 31555.

Comment. Section 34805 is new. It is added for drafting convenience.

§ 34810. Killing elk held in captivity

34810. Except as authorized under a domesticated game breeder's license, an elk kept in captivity may be killed only with the approval of the department, and pursuant to any regulation that the commission may adopt. The carcass of an elk kept in captivity may not be sold, and shall be disposed of as directed by the department.

Comment. Section 34810 continues the part of former Fish and Game Code Section 3006 applicable to elk without change.

CHAPTER 2. TAGS

§ 34850. Valid hunting license

34850. To obtain a tag for the taking of elk, a person must possess a valid hunting license.

Comment. Section 34850 restates former Fish and Game Code Section 332(b) without substantive change.

Notes. (1) Proposed Section 34850 is intended to restate existing Fish and Game Code Section 332(b) to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“Only a person possessing a valid hunting license may obtain a tag for the taking of elk.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of that provision.

(2) Existing law does not include an express requirement that a person have a tag in order to lawfully take an elk. As seen below, there are provisions governing the issuance of a tag, but no requirement that a tag be obtained. Compare proposed Sections 33205 (bear), 34200 (deer), 37150 (wild pig). Nor is there any provision requiring that a tag be attached to an elk that has been taken, that a tag be countersigned, or that any part of the elk be retained and shown to law enforcement on demand. Compare proposed Sections 33215, 33220 (bear), 34110, 34210 (deer). These seem like significant gaps in the law governing sport hunting of elk.

The Commission invites comment on this issue.

§ 34855. Issuance of tags

34855. (a) The commission shall annually direct the department to authorize not more than three elk hunting tags for the purpose of raising funds for programs and projects to benefit elk. These tags may be sold at auction to residents or nonresidents of the state or by another method and are not subject to the fee limitation prescribed in Section 34870.

(b) The commission shall direct the department to annually authorize one elk tag of the total number of tags available for issuance to nonresidents of the state.

Comment. Section 34855 continues former Fish and Game Code Section 332(d)-(e) without substantive change.

Note. (1) Proposed Sections 31905 and 34855 appear to render the last sentence of existing Section 332(d) superfluous, and that sentence would not be continued in the proposed law. The last sentence of existing Section 332(d) reads as follows:

“332. (d).... All revenues from sales pursuant to this subdivision shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.”

The Commission invites comment on whether the discontinuation of the last sentence of existing Section 332(d) in the proposed law is appropriate.

§ 34860. Fee for tag

34860. (a) The fee for an elk tag shall be as follows:

(1) For a resident of the state, a base fee of one hundred sixty-five dollars (\$165), adjusted under Section 3755.

(2) For a nonresident, the commission shall, by regulation, fix the fee at not less than a base fee of one thousand fifty dollars (\$1,050), adjusted under Section 3755.

(b) The fees from the sale of elk tags shall be deposited in the Big Game Management Account established in Section 31900.

Comment. Section 34860 restates the first three sentences of former Fish and Game Code Section 332(c) without substantive change.

Note. Proposed Section 34860 is intended to restate the first three sentences of former Fish and Game Code Section 332(c) to clarify the meaning of that language, without changing its substantive effect. The first three sentences of former Fish and Game Code Section 332(c) read as follows:

“332. (c) The department may issue an elk tag upon payment of a fee. The fee for a tag shall be one hundred sixty-five dollars (\$165) for a resident of the state, as adjusted under Section 713. On or before July 1, 2007, the commission shall, by regulation, fix the fee for a nonresident of the state at not less than one thousand fifty dollars (\$1,050), as adjusted under Section 713.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of these sentences.

§ 34865. Deposit of fees

34865. Except as provided in Section 34870, all revenues from the sale of elk tags, including any fundraising tags, shall be deposited in the Big Game Management Account established in Section 31900 to permit separate accountability for the receipt and expenditure of these funds.

Comment. Section 34865 continues the part of the first sentence of former Fish and Game Code Section 3953(b) applicable to elk without substantive change.

Note. This provision together with proposed Section 31905 appear to render the second sentence of existing Section 332(c) superfluous, and that sentence would not be continued in the proposed law. The second sentence of existing Section 332(c) reads as follows:

“332. (c).... The fees shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended, in addition to moneys budgeted for salaries of the department as set forth in Section 3953.”

The Commission invites comment on whether the discontinuation of the second sentence of existing Section 332(c) in the proposed law is appropriate.

§ 34870. Sale of tag by nonprofit organization

34870. (a) A nonprofit organization designated by the department to assist in the sale of elk fundraising tags that are sold on behalf of the department for the purpose of raising funds for specified programs and projects, pursuant to subdivision (a) of Section 34855 is authorized to retain 5 percent of the amount of the sale price of the tag as a reasonable vendor fee.

(b) Within 30 days of the date of the sale, the selling nonprofit organization shall send the department 95 percent of the total auction sale price of the tag, with an

1 itemized receipt showing the sale price and the 5-percent reduction retained by the
2 nonprofit organization as a vendor's fee.

3 **Comment.** Subdivision (a) of Section 34870 continues the part of former Fish and Game Code
4 Section 709 applicable to elk without substantive change.

5 Subdivision (b) continues the part of the second sentence of former Fish and Game Code
6 Section 3953(b) applicable to elk without change.

7 CHAPTER 3. POPULATION MANAGEMENT

8 § 34950. Regulation of take

9 34950. The commission may determine and fix the area or areas, the seasons
10 and hours, the bag and possession limit, and the number of elk that may be taken
11 under rules and regulations that the commission may adopt from time to time. The
12 commission may authorize the taking of tule elk if the average of the department's
13 statewide tule elk population estimates exceeds 2,000 animals, or the Legislature
14 determines, pursuant to the reports required by Section 34960, that suitable areas
15 cannot be found in the state to accommodate that population in a healthy
16 condition.

17 **Comment.** Section 34950 continues former Fish and Game Code Section 332(a) without
18 substantive change.

19 § 34955. Tule elk management plan

20 34955. The department shall develop a statewide elk management plan,
21 consistent with the state's wildlife policy as set forth in **Section 1801**. The
22 statewide elk management plan shall emphasize maintaining sufficient elk
23 populations in perpetuity, while considering all of the following:

24 (a) Characteristics and geographic range of each elk subspecies within the state,
25 including Roosevelt elk, Rocky Mountain elk, and tule elk.

26 (b) Habitat conditions and trends within the state.

27 (c) Major factors affecting elk within the state, including, but not limited to,
28 conflicts with other land uses.

29 (d) Management activities necessary to achieve the goals of the plan and to
30 alleviate property damage.

31 (e) Identification of high priority areas for elk management.

32 (f) Methods for determining population viability and the minimum population
33 level needed to sustain local herds.

34 (g) Description of the necessary contents for individual herd management plans
35 prepared for high priority areas.

36 **Comment.** Section 34955 continues former Fish and Game Code Section 3952 without
37 substantive change.

38 § 34960. Relocation

39 34960. (a) When relocating tule elk, the department shall relocate the elk in
40 areas suitable to them in the state, and shall cooperate to the maximum extent

possible with federal and local agencies and private property owners in relocating tule elk in suitable areas under their jurisdiction or ownership. When property or environmental damage occurs, emphasis shall be placed on managing each tule elk herd at a biologically sound level through the use of relocation, regulated hunting, or other appropriate methods, individually or in combination, as determined by the department in accordance with the statewide elk management plan developed pursuant to Section 34955, after consulting with local landowners.

(b) The number of tule elk in the Owens Valley shall not be permitted to increase beyond 490, or any greater number hereafter determined by the department to be the Owens Valley's holding capacity in accordance with game management principles.

Comment. Section 34960 continues former Fish and Game Code Section 3951 without substantive change.

CHAPTER 4. TAKE TO PROTECT PROPERTY

§ 35000. Depredation permit

35000. (a) An owner or tenant of land or property that is being damaged or destroyed, or is in danger of being damaged or destroyed, by elk, may apply to the department for a permit to kill the elk causing or threatening the damage or destruction.

(b) Subject to the limitations in subdivision (d), the department, upon satisfactory evidence of actual or immediately threatened damage or destruction of land or property, shall issue a revocable permit for the taking and disposition of the responsible elk, under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions.

(c) Elk taken under a permit issued pursuant to subdivision (b) shall not be sold or shipped from the premises on which they are taken, except pursuant to instructions from the department.

(d) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all of the following:

(1) Verify the actual or immediately threatened damage or destruction.

(2) Provide a written summary of corrective measures necessary to immediately alleviate the problem.

(3) Determine the viability of the local herd, and determine the minimum population level needed to maintain the herd.

(4) Ensure the permit will not reduce the local herd below the minimum.

(5) Work with affected landowners to develop measures to achieve long-term resolution, while maintaining viability of the herd.

(e) After completing the statewide elk management plan pursuant to Section 34955, the department shall use the information and methods contained in the plan to meet the requirements of paragraphs (3), (4), and (5) of subdivision (d).

(f) It is unlawful for any person to violate the terms of any permit issued pursuant to this section.

Comment. Subdivisions (a) through (c) and (f) of Section 35000 restate the part of former Fish and Game Code Section 4181(a) applicable to elk without substantive change.

Subdivisions (d) and (e) continue former Fish and Game Code Section 4181(d) without substantive change.

Note. Proposed Section 35000(a)-(c) and (f) are intended to restate the part of existing Fish and Game Code Section 4181(a) applicable to elk to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b) ...

(c)...

(d) With respect to elk, the following procedures shall apply:

(1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all of the following:

(A) Verify the actual or immediately threatened damage or destruction.

(B) Provide a written summary of corrective measures necessary to immediately alleviate the problem.

(C) Determine the viability of the local herd, and determine the minimum population level needed to maintain the herd.

(D) Ensure the permit will not reduce the local herd below the minimum.

(E) Work with affected landowners to develop measures to achieve long-term resolution, while maintaining viability of the herd.

(2) After completing the statewide elk management plan pursuant to Section 3952, the department shall use the information and methods contained in the plan to meet the requirements of subparagraphs (C), (D), and (E) of paragraph (1).”

The references in existing Section 4181 to existing Section 4181.1 and to subdivision (b) of Section 4181 have not been continued in proposed Section 35000, as those provisions do not apply to elk.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

CHAPTER 5. ENHANCED PENALTIES

§ 35100. Enhanced penalty for specified violations

35100. (a) Notwithstanding Section 4400 or subdivision (a) of Section 8400, the punishment for any person who knowingly violated and has been convicted of any of the following provisions where the violation involved a trophy elk shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment:

(1) Section 8015, if the person took an elk outside the established season.

(2) Section 8125.

(3) Section 8300, if the person failed to procure the required license or tag prior to taking an elk.

(4) Section 31800.

(5) Section 257.5 of Title 14 of the California Code of Regulations.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of elk or parts of elk.

(c) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 31900 and shall be used for the big game management purposes described in that section.

(d) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 35100 continues the part of former Fish and Game Code Section 12013.3 applicable to elk without substantive change.

TITLE 8. FOXES

§ 35200. Classification

35200. For the purposes of this code, a gray fox, red fox, and kit fox are fur-bearing mammals.

Comment. Section 35200 continues the part of former Fish and Game Code Section 4000 applicable to gray foxes, red foxes, and kit foxes, without substantive change.

§ 35205. Provisions not exclusive

35205. The provisions of this title are not intended to be exclusive. Other provisions that govern foxes include, but are not limited to, Section 2720.

Comment. Section 35205 is new. It is added for drafting convenience.

1 **§ 35210. Take for profit**

2 35210. It is unlawful to take a red fox for a profitmaking purpose.

3 **Comment.** Section 35210 continues former Fish and Game Code Section 4012 without
4 substantive change.

5 **§ 35215. Protection of property**

6 35215. (a) Except as provided in Section 11200, a subspecies of red fox that is
7 not the native Sierra Nevada red fox (*Vulpes vulpes necator*) and that is found to
8 be injuring growing crops or other property may be taken by the following persons
9 at any time or in any manner not prohibited by this code or regulations adopted
10 pursuant to this code:

11 (1) The owner or tenant of the premises.

12 (2) An employee or agent of the owner or tenant of the premises, who is in
13 immediate possession of written permission from the owner or tenant to take a fox
14 described in this subdivision.

15 (3) An officer or employee of the Department of Food and Agriculture.

16 (4) A federal, county, or city officer or employee acting in official capacity
17 pursuant to provisions of the Food and Agricultural Code pertaining to pests, or
18 pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of
19 Division 4 of the Food and Agricultural Code.

20 (b) A person that takes a red fox pursuant to this section is exempt from
21 subdivision (a) of Section 9500, except when providing trapping services for a fee.

22 (c) Raw fur from a red fox taken pursuant to this section shall not be sold.

23 **Comment.** Section 35215 restates the part of former Fish and Game Code Section 4152
24 applicable to certain subspecies of red foxes without substantive change.

25 See also Section 11000 (inspection and removal of animals from traps).

26 **Notes.** (1) Proposed Section 35215 is intended to restate the part of existing Fish and Game
27 Code Section 4152 applicable to certain subspecies of red foxes to clarify the meaning of that
28 language, without changing its substantive effect. Existing Section 4152 reads as follows:

29 “4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits,
30 muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes*
31 *necator*), and red fox squirrels that are found to be injuring growing crops or other property may
32 be taken at any time or in any manner in accordance with this code and regulations adopted
33 pursuant to this code by the owner or tenant of the premises or employees and agents in
34 immediate possession of written permission from the owner or tenant thereof. They may also be
35 taken by officers or employees of the Department of Food and Agriculture or by federal, county,
36 or city officers or employees when acting in their official capacities pursuant to the Food and
37 Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021)
38 of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals
39 in accordance with this section are exempt from Section 3007, except when providing trapping
40 services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not
41 be sold.

42 (b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be
43 removed at least once daily. The inspection and removal shall be done by the person who sets the
44 trap or the owner of the land where the trap is set or an agent of either.”

45 **The Commission invites comment on whether the restatement would cause any**
46 **substantive change in the meaning of the provision.**

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

The Commission invites comment on whether or how the term “immediate possession” differs from “possession,” and whether the more familiar term “possession” could be substituted without substantively changing the meaning of the provision.

TITLE 9. MOUNTAIN LION

Note. Existing Fish and Game Code Sections 3950.1, 4800-4801, and 4802-4809 (which would be continued in this title in proposed Sections 35300(b), and 35310 through 35435), were added in 1990 pursuant to an initiative statute, Proposition 117.

Under Article 2, Section 10(c) of the California Constitution, an initiative statute may be amended or repealed by the Legislature only when expressly permitted by the text of the initiative statute. The text of Proposition 117 provides in pertinent part that any section added to the Fish and Game Code by the proposition may be subsequently amended by the Legislature “only by a statute approved by a vote of four-fifths of the members of both houses of the Legislature,” and that any such amendment “shall be consistent with, and further the purposes of,” the proposition. The text does not address a subsequent repeal of any section added by the proposition.

However, courts have held that, for the provisions of Article 2, Section 10(c), a legislative enactment only amends an initiative statute when it “prohibits what the initiative authorizes, or authorizes what the initiative prohibits.” *People v. Superior Court (Pearson)*, 48 Cal. 4th 564, 571; 227 P.3d 858; 107 Cal. Rptr. 3d 265 (2010). (The Commission has located no authority directly addressing whether this principle also applies to a repeal of an initiative statute.)

Based on interpretative case law, the office of Legislative Counsel has informally expressed to Commission its view that the repeal and recodification of an initiative statute in a single enactment is not precluded by Article 2, Section 10(c), if the recodification does not substantively change the meaning of the repealed initiative statute.

The Commission invites comment on whether the proposed recodification of the initiative provisions would substantively change the meaning of those provisions, or would for some other reason violate Article 2, Section 10(c) of the California Constitution.

CHAPTER 1. GENERAL PROVISIONS

§ 35300. Classification

35300. (a) For the purposes of this code, a mountain lion (genus *Felis*) is a game mammal.

(b) Notwithstanding subdivision (a) or any other provision of this code, the mountain lion (genus *Felis*) shall not be listed as, or considered to be, a game mammal by the department or the commission.

Comment. Subdivision (a) of Section 35300 continues the part of former Fish and Game Code Section 3950(a) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 3950.1(a) without substantive change.

§ 35305. Provisions not exclusive

35305. The provisions of this title are not intended to be exclusive. Other provisions that govern mountain lions include, but are not limited to, the following provisions:

1 (a) Section **2780**.

2 (b) Section **2786**.

3 **Comment.** Section 35305 is new. It is added for drafting convenience.

4 **§ 35310. Prohibition against superseding regulation**

5 35310. Section 1025 does not apply to this title. Neither the commission nor the
6 department shall adopt any regulation that conflicts with or supersedes a provision
7 of this title.

8 **Comment.** Section 35310 combines and continues former Fish and Game Code Sections
9 3950.1(b) and 4800(d) without substantive change.

10 **§ 35315. “Agent”**

11 35315. As used in this title, “agent” means any of the following:

12 (a) The agent or employee of the owner of the damaged or destroyed property.


13 (b) Any county or city predator control officer.

14 (c) Any employee of the Animal Damage Control Section of the United States
15 Department of Agriculture.

16 (d) Any departmental personnel.

17 (e) Any authorized or permitted houndsman registered with the department as
18 possessing the requisite experience, and having no prior conviction for violation of
19 any provision of this code or regulation adopted pursuant to this code. For
20 purposes of this paragraph, a conviction includes a plea of nolo contendere.

21 **Comment.** Section 35315 continues former Fish and Game Code Section 4808 without
22 substantive change.

23  **Note.** The Commission invites comment on a gender-neutral term that could be
24 substituted in this provision for the word “houndsman.”

25 CHAPTER 2. SPECIAL PROTECTIONS

26 **§ 35350. Prohibitions on take and possession**

27 35350. (a) The mountain lion (genus Puma) is a specially protected mammal
28 under the laws of this state.

29 (b)(1) It is unlawful to take, injure, possess, transport, import, or sell a mountain
30 lion or a product of a mountain lion, except as specifically provided in this title or
31 in Part 6 (commencing with Section 26500) of Division 7.

32 (2) This title does not prohibit the sale or possession of a mountain lion or a
33 product of a mountain lion, when the owner can demonstrate that the mountain
34 lion, or product of a mountain lion, was in the person’s possession on June 6,
35 1990.

36 (3) This title does not prohibit the possession of a mountain lion carcass or a
37 product of a mountain lion carcass, if all of the following requirements are met:

38 (A) The carcass or carcass product is prepared or being prepared for display,
39 exhibition, or storage, for a bona fide scientific or educational purpose, at a

1 nonprofit museum or government-owned facility generally open to the public or at
2 an educational institution, including a public or private postsecondary institution.

3 (B) The mountain lion was taken in California consistent with the requirements
4 of this title and any other applicable law.

5 (C) The department has authorized the possession of the carcass or carcass
6 product for the purposes of this paragraph.

7 (c) A violation of this section is a misdemeanor punishable by imprisonment in a
8 county jail for not more than one year, or a fine of not more than ten thousand
9 dollars (\$10,000), or by both that fine and imprisonment. An individual is not
10 guilty of a violation of this section if it is demonstrated that, in taking or injuring a
11 mountain lion, the individual was acting in self-defense or in defense of others.

12 **Comment.** Section 35350 continues former Fish and Game Code Section 4800(a)-(c) without
13 substantive change.

14 CHAPTER 3. PUBLIC SAFETY AND PROTECTION OF PROPERTY

15 § 35400. Removal by department

16 35400. The department may remove or take any mountain lion, or authorize an
17 appropriate local agency with public safety responsibility to remove or take any
18 mountain lion, that is perceived to be an imminent threat to public health or safety
19 or that is perceived by the department to be an imminent threat to the survival of
20 any threatened, endangered, candidate, or fully protected sheep species.

21 **Comment.** Section 35400 continues former Fish and Game Code Section 4801 without
22 change.

23 § 35405. Permit to protect property

24 35405. Any person, or the employee or agent of a person, whose livestock or
25 other property is being or has been injured, damaged, or destroyed by a mountain
26 lion may report that fact to the department and request a permit to take the
27 mountain lion.

28 **Comment.** Section 35405 continues former Fish and Game Code Section 4802 without
29 change.

30 § 35410. Confirmation of depredation

31 35410. Upon receipt of a report pursuant to Section 35405, the department, or
32 any animal damage control officer specifically authorized by the department to
33 carry out this responsibility, shall immediately take the action necessary to
34 confirm that there has been depredation by a mountain lion as reported. The
35 confirmation process shall be completed as quickly as possible, but in no event
36 more than 48 hours after receiving the report. If satisfied that there has been
37 depredation by a mountain lion as reported, the department shall promptly issue a
38 permit to take the depredating mountain lion.

39 **Comment.** Section 35410 continues former Fish and Game Code Section 4803 without
40 substantive change.

1 **§ 35415. Permit conditions**

2 35415. In order to ensure that only the depredating mountain lion will be taken,
3 the department shall issue the permit pursuant to Section 35410 with the following
4 conditions attached:

5 (a) The permit shall expire 10 days after issuance.

6 (b) The permit shall authorize the holder to begin pursuit not more than one mile
7 from the depredation site.

8 (c) The permit shall limit the pursuit of the depredating mountain lion to within
9 a 10-mile radius from the location of the reported damage or destruction.

10 **Comment.** Section 35415 continues former Fish and Game Code Section 4804 without
11 substantive change.

12 **§ 35420. Expedited permit**

13 35420. Whenever immediate authorization will materially assist in the pursuit of
14 the particular mountain lion believed to be responsible for the depredation
15 reported pursuant to Section 35405, the department or the animal damage control
16 officer may orally authorize the pursuit and taking of the depredating mountain
17 lion, and the department shall issue a written permit for the period previously
18 authorized as soon as practicable after the oral authorization.

19 **Comment.** Section 35420 continues former Fish and Game Code Section 4805 without
20 substantive change.

21 **§ 35425. Report to department**

22 35425. (a) Any person issued a permit pursuant to Section 35410 or 35420 shall
23 report the capturing, injuring, or killing of any mountain lion to an office of the
24 department by telephone within 24 hours, or, if telephoning is not practicable,
25 shall submit a report in writing within five days after the capturing, injuring, or
26 killing of the mountain lion.

27 (b) At the time of making the report of the capturing, injuring, or killing, the
28 holder of the permit shall make arrangements to turn over the mountain lion or the
29 entire carcass of the mountain lion that has been recovered to a representative of
30 the department, and shall do so in a timely manner.

31 **Comment.** Section 35425 continues former Fish and Game Code Section 4806 without
32 substantive change.

33 **§ 35430. Immediate taking of encountered depredator**

34 35430. (a) Any mountain lion that is encountered while in the act of pursuing,
35 inflicting injury to, or killing livestock, or domestic animals, may be taken
36 immediately by the owner of the property or the owner's employee or agent. The
37 taking shall be reported within 72 hours to the department. The department shall
38 investigate the depredation, and, if the mountain lion was captured, injured, or
39 killed, the mountain lion or the entire carcass of the mountain lion that has been
40 recovered shall be turned over to the department.

1 (b) Upon satisfactorily completing the investigation and receiving the mountain
2 lion or the carcass, if recovered, the department shall issue a permit confirming
3 that the requirements of this section have been met with respect to the particular
4 mountain lion taken under these circumstances.

5 (c) The department shall undertake a complete necropsy on any returned
6 mountain lion carcass and report the findings to the commission. The commission
7 shall compile the reported findings and prepare an annual written report that shall
8 be submitted to the Legislature not later than the January 15 next following the
9 year in which the mountain lion was taken.

10 **Comment.** Section 35430 continues former Fish and Game Code Section 4807 without
11 substantive change.

12 **§ 35435. Method of taking**

13 35435. A mountain lion authorized to be taken pursuant to this title shall be
14 taken by the most effective means available to take the mountain lion causing the
15 damage or destruction, except that no mountain lion shall be taken by means of
16 poison, leg-hold or metal-jawed traps, and snares.

17 **Comment.** Section 35435 continues former Fish and Game Code Section 4809 without
18 substantive change.

19 **§ 35440. Use of nonlethal procedures**

20 35440. (a) Unless authorized in this title, nonlethal procedures shall be used
21 when removing or taking any mountain lion that has not been designated as an
22 imminent threat to public health or safety.

23 (b) For purposes of this title, “imminent threat to public health or safety” means
24 a situation where a mountain lion exhibits one or more aggressive behaviors
25 directed toward a person that is not reasonably believed to be due to the presence
26 of responders.

27 (c) For purposes of this title, “nonlethal procedures” means procedures that may
28 include, but are not limited to, capturing, pursuing, anesthetizing, temporarily
29 possessing, temporarily injuring, marking, attaching to or surgically implanting
30 monitoring or recognition devices, providing veterinary care, transporting, hazing,
31 rehabilitating, releasing, or taking no action.

32 (d) The department may, as the department determines is necessary to protect
33 mountain lions or the public, authorize qualified individuals, educational
34 institutions, governmental agencies, or nongovernmental organizations to
35 implement nonlethal procedures on a mountain lion in accordance with
36 subdivision (a).

37 **Comment.** Section 35440 continues former Fish and Game Code Section 4801.5 without
38 change.”

CHAPTER 4. TAKE FOR SCIENTIFIC PURPOSES

§ 35500. Research

35500. (a) As used in this section:

(1) “Authorized research project” means a research project involving mountain lions subject to a Scientific Collecting Permit issued in accordance with this section.

(2) “Permitholder” means a person to whom the department has issued a Scientific Collecting Permit in accordance with this section.

(3) “Scientific Collecting Permit” or “permit” means a permit issued pursuant to Section 9200 for a research project involving mountain lions in accordance with this section.

(b) The department may authorize qualified individuals, educational institutions, governmental agencies, or nongovernmental organizations to conduct scientific research involving mountain lions pursuant to a Scientific Collecting Permit as provided in Section 9200.

(c) The department may authorize a permitholder to pursue, capture, temporarily possess, temporarily injure, mark, surgically implant a monitoring or recognition devices in or attach such a device to, provide veterinary care to, and transport, a mountain lion or a product of a mountain lion.

(d) In addition to the requirements in Section 9200, an authorized research project shall be designed to do the following:

(1) Contribute to the knowledge of natural wildlife ecosystems.

(2) Minimize disruptions in the lives and movements of mountain lions and other wildlife, as well as impacts to mountain lion or other wildlife habitat, while maintaining the permitholder’s research objectives.

(3) Directly or indirectly support the sustainability and survival of mountain lion populations and healthy ecosystems.

(4) Prevent the permanent injury or killing of a mountain lion.

(e) An authorized research project shall be governed by the Scientific Collecting Permit. The permit shall include, at a minimum, proposed research methods and recordkeeping procedures that address the following:

(1) The capture of, anesthetization of, collection of diagnostic samples from, and transport of, mountain lions or product of a mountain lion or a product of a mountain lion.

(2) Attaching monitoring or recognition devices to, surgically implanting those devices in, or marking, animals affect by the research project.

(3) Providing veterinary care as required for the health, safety, and humane treatment of animals affected by the research project.

(4) The recording of the adverse effects of authorized research procedures on mountain lions and other wildlife.

(5) The qualifications of onsite personnel necessary for carrying out authorized research procedures. A permit applicant shall submit verifiable documentation

demonstrating that at least one onsite staff person has at least one year of experience in proposed research methods that involve activities described in subdivision (c).

(6) Annual and final reports to the department.

(f) The department shall notify the public at least 30 days prior to the issuance of a permit, and, upon request, shall make available to the public copies of the permit and annual and final reports.

(g) The department shall handle mortality or permanent injury to a mountain lion as a result of research authorized pursuant to this section in a manner consistent with the reporting and processing requirements imposed in Section 35430.

Comment. Section 35500 continues former Fish and Game Code Section 4810 without substantive change.

TITLE 10. MUSKRAT

§ 35600. Fur-bearing mammal

35600. For the purposes of this code, a muskrat is a fur-bearing mammal.

Comment. Section 35600 continues the part of former Fish and Game Code Section 4000 applicable to muskrats without substantive change.

§ 35605. Provisions not exclusive

35605. The provisions of this title are not intended to be exclusive. Other provisions that govern muskrat include, but are not limited to, the following provisions:

(a) Section 11010.

(b) Section 37460.

Comment. Section 35605 is new. It is added for drafting convenience.

§ 35610. Protection of property

35610. (a) Except as provided in Section 11200, a muskrat that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take muskrat described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a muskrat pursuant to this section is exempt from Section 9500, except when providing trapping services for a fee.

(c) Raw fur from a muskrat taken pursuant to this section shall not be sold.

Comment. Section 35610 restates the part of former Fish and Game Code Section 4152 applicable to muskrats without substantive change.

See also Section 11000 (inspection and removal of animals from traps).

Notes. (1) Proposed Section 35610 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to muskrats to clarify the meaning of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

The Commission invites comment on whether or how the term “immediate possession” differs from “possession,” and whether the more familiar term “possession” could be substituted without substantively changing the meaning of the provision.

§ 35615. Importation or transportation of live muskrat

35615. (a) It is unlawful to import or transport any live muskrat (genus *Ondatra*) into, or possess any live muskrat in, California except under permit issued by the department pursuant to Section 26520, or as otherwise provided by law.

(b) A county agricultural commissioner, fish and game deputy, or state plant quarantine officer may enter upon lands or waters west of the crest of the Cascade-Sierra Nevada mountain system, and west and south of the Tehachapi, Liebre, San Gabriel, San Bernardino, San Jacinto, Cuyamaca, and connected mountains south to the international boundary, or in any watershed tributary to, or draining into, the Pacific Ocean to remove or destroy the muskrats.

Comment. Section 35615 continues former Fish and Game Code Section 2250 without substantive change.

TITLE 11. RABBIT AND HARE

§ 35700. Classification

35700. For the purposes of this code, a jackrabbit and varying hares (genus *Lepus*), a cottontail, brush rabbit, and a pigmy rabbit (genus *Sylvilagus*), are game mammals.

Comment. Section 35700 continues the part of former Fish and Game Code Section 3950(a) applicable to jackrabbits and varying hares, cottontails, brush rabbits, and pigmy rabbits, without substantive change.

§ 35705. Protection of crops

35705. (a) Notwithstanding any provision of this code to the contrary, an owner or tenant of land, or any person authorized in writing by that owner or tenant, may take cottontail or brush rabbits during any time of the year when damage to crops or forage is being experienced on that land.

(b) Any person transporting a rabbit taken pursuant to subdivision (a) from the land where the rabbit was taken, other than the owner or tenant of that land, shall have in possession written authority from the owner or tenant of the land.

(c) Rabbits taken pursuant to this section shall not be sold.

Comment. Section 35705 continues former Fish and Game Code Section 4186 without substantive change.

§ 35710. Taking of jackrabbit injuring property

35710. (a) Except as provided in Section 11200, a black-tailed jackrabbit that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take a black-tailed jackrabbit described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a black-tailed jackrabbit pursuant to this section is exempt from subdivision (a) of Section 9500, except when providing trapping services for a fee.

(c) Raw fur from a black-tailed jackrabbit taken pursuant to this section shall not be sold.

Comment. Section 35710 restates the part of former Fish and Game Code Section 4152 applicable to black-tailed jackrabbits without substantive change.

See also Section 11000 (inspection and removal of animals from traps).

Notes. (1) Proposed Section 35710 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to black-tailed jackrabbits to clarify the meaning of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

The Commission invites comment on whether or how the term “immediate possession” differs from “possession,” and whether the more familiar term “possession” could be substituted without substantively changing the meaning of the provision.

TITLE 12. SEA OTTER

§ 35750. Classification

35750. For the purposes of this code:

(a) A sea otter is a marine mammal.

(b) A Southern sea otter (*Enhydra lutris nereis*) is a fully protected mammal.

Comment. Subdivision (a) of Section 35750 continues the part of former Fish and Game Code Section 4500(c) applicable to sea otters without substantive change.

Subdivision (b) continues former Fish and Game Code Section 4700(b)(8) without substantive change.

§ 35755. Regulation of cat litter

35755. (a) The Legislature finds and declares that several types of nonpoint source pollution are harmful to sea otters, and that scientific studies point to links between cat feces, the pathogen *T-gondii*, and sea otter mortality. The Legislature further finds and declares that efforts to reduce the flushing of cat litter and cat feces are steps toward better water quality in the sea otters’ natural habitat.

(b) Any cat litter offered for sale in this state shall contain one of the following statements:

(1) “Encouraging your cat to use an indoor litter box, or properly disposing of outdoor cat feces, is beneficial to overall water quality. Please do not flush cat litter in toilets or dispose of it outdoors in gutters or storm drains.”

(2) A general statement that encourages the disposal of cat feces in trash and discourages flushing cat feces in toilets or disposing of them in drains.

Comment. Section 35755 continues former Fish and Game Code Section 4501 without change.

TITLE 12. SHEEP

CHAPTER 1. GENERAL PROVISIONS

§ 35800. Classification

35800. For the purposes of this code, except as provided by subdivision (b) of Section 35900, a Bighorn sheep (*Ovis canadensis*) is a fully protected mammal.

Comment. Section 35800 continues former Fish and Game Code Section 4700(b)(2) without substantive change.

§ 35805. Provisions not exclusive

35805. The provisions of this title are not intended to be exclusive. Other provisions that govern sheep include, but are not limited to, the following provisions:

(a) Section 1587.

(b) Section 2720.

(c) Paragraph (5) of subdivision (a) of Section 460.

(d) Section 35400.

Comment. Section 35805 is new. It is added for drafting convenience.

§ 35810. Legislative declaration of policy

35810. The Legislature declares that bighorn sheep are an important wildlife resource of the state to be managed and maintained at sound biological levels. Therefore, it is hereby declared to be the policy of the state to encourage the preservation, restoration, utilization, and management of California’s bighorn sheep population. The management shall be in accordance with the policy set forth in Section 1801.

Comment. Section 35810 continues former Fish and Game Code Section 4900 without substantive change.

§ 35815. Development of plans for population management

35815. The department shall determine the status and the trend of bighorn sheep populations by management units. A plan shall be developed for each of the management units. The plan for each management unit shall include all of the following:

1 (a) Data on the numbers, age, sex ratios, and distribution of bighorn sheep
2 within the management unit.

3 (b) A survey of range conditions and a report on the competition that may exist
4 as a result of human, livestock, wild burro, or any other mammal encroachment.

5 (c) An assessment of the need to relocate or reestablish bighorn populations.

6 (d) A statement on the prevalence of disease or parasites within the population.

7 (e) Recommendations for achieving the policy objective of Section 35810.

8 **Comment.** Section 35815 continues former Fish and Game Code Section 4901 without
9 substantive change.

10 **§ 35820. Sale of tag by nonprofit organization**

11 35820. (a) A nonprofit organization designated by the department to assist in the
12 sale of bighorn sheep fundraising tags that are sold on behalf of the department for
13 the purpose of raising funds for specified programs and projects, pursuant to or
14 Section 35905, is authorized to retain 5 percent of the amount of the sale price of
15 the tag as a reasonable vendor fee.

16 (b) Within 30 days of the date of the sale, the selling nonprofit organization shall
17 send the department 95 percent of the total auction sale price of the tag, with an
18 itemized receipt showing the sale price and the 5-percent reduction retained by the
19 nonprofit organization as a vendor's fee.

20 **Comment.** Subdivision (a) of Section 35820 continues the part of former Fish and Game Code
21 Section 709 applicable to bighorn sheep without substantive change.

22 Subdivision (b) continues the part of the second sentence of former Fish and Game Code
23 Section 3953(b) applicable to sheep without change.

24 **§ 35825. Deposit of fees**

25 35825. (a) Except as provided in subdivision (a) of Section 35825, all revenues
26 from the sale of sheep tags, including any fundraising tags, shall be deposited in
27 the Big Game Management Account established in Section 31900 to permit
28 separate accountability for the receipt and expenditure of these funds.

29 (b) These funds shall be used to augment, and not to replace, moneys
30 appropriated from existing funds available to the department for the preservation,
31 restoration, utilization, and management of bighorn sheep. The department shall
32 maintain internal accountability necessary to ensure that all restrictions on the
33 expenditure of these funds are met.

34 (c) Administrative overhead shall be limited to the reasonable costs associated
35 with the direct administration of the program.

36 **Comment.** Subdivision (a) of Section 35825 continues the part of the first sentence of former
37 Fish and Game Code Section 3953(b) applicable to sheep without substantive change.

38 Subdivision (b) continues the third and fourth sentences of former Fish and Game Code
39 Section 4903 without change.

40 Subdivision (c) continues the second sentence of former Fish and Game Code Section 4903
41 without change.

CHAPTER 2. NELSON BIGHORN SHEEP

§ 35900. Population management

35900. (a) The commission may adopt all regulations necessary to provide for biologically sound management of Nelson bighorn sheep (subspecies *Ovis canadensis nelsoni*).

(b) After the plans for the management units developed by the department pursuant to Section 35815 have been submitted, the commission may authorize sport hunting of mature Nelson bighorn rams, subject to the following:

(1) Before authorizing the sport hunting, the commission shall take into account the Nelson bighorn sheep population statewide, including the population in the management units designated for hunting.

(2) Notwithstanding Section 1025, the commission shall not adopt regulations authorizing the sport hunting in a single year of more than 15 percent of the mature Nelson bighorn rams in a single management unit, based on the department's annual estimate of the population in each management unit.

Comment. Section 35900 continues former Fish and Game Code Section 4902(a) and (b) without substantive change.

Notes. (1) Existing Fish and Game Code Section 4902(b) (proposed Section 35900(b)) grants the Fish and Game Commission specified authority, after plans for management units developed by the department pursuant to Section 4901 "have been submitted." However, neither Section 4901 nor 4902 contain any other reference or any requirement relating to the "submission" of these plans.

The Commission invites comment on the meaning of this language.

§ 35905. Issuance of tags

35905. (a) The commission shall annually direct the department to authorize not more than three of the tags available for issuance that year to take Nelson bighorn rams for the purpose of raising funds for programs and projects to benefit Nelson bighorn sheep. These tags may be sold to residents or nonresidents of the State of California at auction or by another method and shall not be subject to the fee limitation prescribed in subdivision (a).

(b) If more than one tag is authorized, the department shall designate a nonprofit organization organized pursuant to the laws of this state, or the California chapter of a nonprofit organization organized pursuant to the laws of another state, as the seller of not less than one of these tags. The number of tags authorized for the purpose of raising funds pursuant to this subdivision, if more than one, shall not exceed 15 percent of the total number of tags authorized pursuant to subdivision (b) of Section 35900.

(c) No tag issued pursuant to this section shall be valid until the licensee has successfully completed a prehunt hunter familiarization and orientation and has demonstrated to the department familiarity with the requisite equipment for participating in the hunting of Nelson bighorn rams, as determined by the

commission. The orientation shall be conducted by the department at convenient locations and times preceding each season, as determined by the commission.

Comment. Subdivisions (a) and (b) of Section 35905 continue former Fish and Game Code Section 4902(d) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 4902(e) without substantive change.

Notes. (1) Existing law does not include an express requirement that a person have a tag in order to lawfully take Nelson bighorn ram. Proposed Section 35905 governs the issuance of a tag, but contains no requirement that a tag be obtained. Compare proposed Sections 33205 (bear), 34200 (deer), 37150 (wild pig). Nor is there any provision requiring that a tag be attached to a Nelson bighorn ram that has been taken, that a tag be countersigned, or that any part of the ram be retained and shown to law enforcement on demand. Compare proposed Sections 33215, 33220 (bear), 34110, 34210 (deer). These seem like significant gaps in the law governing sport hunting of Nelson bighorn rams.

The Commission invites comment on this issue.

§ 35910. Fee for tags

35910. The fee for a tag to take a Nelson bighorn ram is as follows:

(a) For a resident of the state, four hundred dollars (\$400), which shall be adjusted annually pursuant to Section 3755.

(b) For a nonresident of the state, on or before July 1, 2015, the commission shall, by regulation, fix the fee at not less than one thousand five hundred dollars (\$1,500), which shall be adjusted annually pursuant to Section 3755.

Comment. Section 35910 restates existing Fish and Game Code Section 4902(c) without substantive change.

Note. Proposed Section 35910 is intended to restate the first two sentences of existing Fish and Game Code Section 4902(c) to clarify the meaning of that language, without changing its substantive effect. The third sentence of existing Section 4902(c) is deleted as superfluous. See Sections 31905, 35915.

Existing Section 4902(c) reads as follows:

“4902. (c) The fee for a tag to take a Nelson bighorn ram shall be four hundred dollars (\$400) for a resident of the state, which shall be adjusted annually pursuant to Section 713. On or before July 1, 2015, the commission shall, by regulation, fix the fee for a nonresident of the state at not less than one thousand five hundred dollars (\$1,500), which shall be adjusted annually pursuant to Section 713. Fee revenues shall be deposited in the Big Game Management Account established in Section 3953 and, upon appropriation by the Legislature, shall be expended as set forth in that section.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 35915. Use of revenue

35915. (a) Revenue from the fees authorized by this chapter shall be deposited in the Big Game Management Account established in Section 31900 and, upon appropriation by the Legislature, shall be expended as set forth in that section.

(b) Administrative overhead shall be limited to the reasonable costs associated with the direct administration of the program.

(c) These funds shall be used to augment, and not to replace, moneys appropriated from existing funds available to the department for the preservation, restoration, utilization, and management of bighorn sheep. The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of these funds are met.

Comment. Section 35915 continues former Fish and Game Code Section 4903 without substantive change.

CHAPTER 3. PENALTIES

§ 35950. Punishment for taking

35950. Notwithstanding Section 4400, the punishment for taking any bighorn sheep in violation of this title, or any regulation adopted pursuant to a provision in this title, is a fine of not more than two thousand dollars (\$2,000) or imprisonment in a county jail for not more than one year, or both that fine and imprisonment.

Comment. Section 35950 continues former Fish and Game Code Section 12008.5 without substantive change.

Note. Existing Fish and Game Code Section 12008.5 (which would be continued by proposed Section 35950) specifies a punishment for taking bighorn sheep, “[n]otwithstanding Section 12000.” However, Section 12000 does not specify any punishment that would otherwise apply to the taking of bighorn sheep, nor does it specify a default punishment for a violation of the code.

The Commission believes it likely the section intended to include within this reference existing Section 12002, which in subdivision (a) does provide a default punishment for an unspecified code violation. Proposed Section 35950 would revise the reference to refer to the provision of the proposed law that would continue existing Sections 12000(a) and 12002(a).

The Commission invites comment on this revision.

§ 35955. Enhanced penalty for specified violations

35955. (a) Notwithstanding Section 4400, subdivision (a) of Section 8400, subdivision (c) of Section 32700, or Section 35950, the punishment for any person who knowingly violated and has been convicted of any of the following provisions where the violation involved a trophy bighorn sheep shall be a fine of not less than five thousand dollars (\$5,000), nor more than forty thousand dollars (\$40,000), or imprisonment in a county jail for not more than one year, or both that fine and imprisonment:

(1) Section 8015, if the person took a bighorn sheep outside the established season.

(2) Section 8125.

(3) Section 8300, if the person failed to procure the required license or tag prior to taking a bighorn sheep.

(4) Section 31800.

(5) Section 257.5 of Title 14 of the California Code of Regulations.

(b) The commission shall adopt regulations to implement this section, including establishing a trophy designation and monetary value based on the size or related characteristics of bighorn sheep or parts of bighorn sheep.

(c) All revenue from fines imposed pursuant to this section shall be deposited in the Big Game Management Account established in Section 31900 and shall be used for the big game management purposes described in that section.

(d) Moneys equivalent to 50 percent of the revenue from any fine collected pursuant to this section shall be paid to the county in which the offense was committed, pursuant to Section 3610. The county board of supervisors shall first use revenues pursuant to this subdivision to reimburse the costs incurred by the district attorney or city attorney in investigating and prosecuting the violation. Any excess revenues may be expended in accordance with Section 3915.

Comment. Section 35955 continues the part of former Fish and Game Code Section 12013.3 applicable to bighorn sheep without substantive change.

TITLE 13. SQUIRREL

§ 36000. Classification

36000. For the purposes of this code, a tree squirrel (genus *Sciurus* and *Tamiasciurus*) is a game mammal.

Comment. Section 36000 continues the part of former Fish and Game Code Section 3950(a) applicable to tree squirrels without substantive change.

§ 36005. Provisions not exclusive

36005. The provisions of this part are not intended to be exclusive. Other provisions that govern squirrels include, but are not limited to, Section 37460.

Comment. Section 36005 is new. It is added for drafting convenience.

§ 36010. Protection of property

36010. (a) Except as provided in Section 11200, a red fox squirrel that is found to be injuring growing crops or other property may be taken by the following persons at any time or in any manner not prohibited by this code or regulations adopted pursuant to this code:

(1) The owner or tenant of the premises.

(2) An employee or agent of the owner or tenant of the premises, who is in immediate possession of written permission from the owner or tenant to take a squirrel described in this subdivision.

(3) An officer or employee of the Department of Food and Agriculture.

(4) A federal, county, or city officer or employee acting in official capacity pursuant to provisions of the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code.

(b) A person that takes a red fox squirrel pursuant to this section is exempt from subdivision (a) of Section 9500, except when providing trapping services for a fee.

(c) Raw fur from a red fox squirrel taken pursuant to this section shall not be sold.

Comment. Section 36010 restates the part of former Fish and Game Code Section 4152 applicable to red fox squirrels without substantive change.

See also Section 11000 (inspection and removal of animals from traps).

Notes. (1) Proposed Section 36010 is intended to restate the part of existing Fish and Game Code Section 4152 applicable to red fox squirrels to clarify the meaning of that language, without changing its substantive effect. Existing Section 4152 reads as follows:

“4152. (a) Except as provided in Section 4005, nongame mammals and black-tailed jackrabbits, muskrats, subspecies of red fox that are not the native Sierra Nevada red fox (*Vulpes vulpes necator*), and red fox squirrels that are found to be injuring growing crops or other property may be taken at any time or in any manner in accordance with this code and regulations adopted pursuant to this code by the owner or tenant of the premises or employees and agents in immediate possession of written permission from the owner or tenant thereof. They may also be taken by officers or employees of the Department of Food and Agriculture or by federal, county, or city officers or employees when acting in their official capacities pursuant to the Food and Agricultural Code pertaining to pests, or pursuant to Article 6 (commencing with Section 6021) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code. Persons taking mammals in accordance with this section are exempt from Section 3007, except when providing trapping services for a fee. Raw furs, as defined in Section 4005, that are taken under this section, shall not be sold.

(b) Traps used pursuant to this section shall be inspected and all animals in the traps shall be removed at least once daily. The inspection and removal shall be done by the person who sets the trap or the owner of the land where the trap is set or an agent of either.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

(2) Existing Section 4152 refers to employees and agents in “immediate possession” of written permission from the owner or tenant of premises where depredators are injuring property.

The Commission invites comment on whether or how the term “immediate possession” differs from “possession,” and whether the more familiar term “possession” could be substituted without substantively changing the meaning of the provision.

§ 36015. Depredation permit

36015. (a) An owner or tenant of land or property that is being damaged or destroyed, or is in danger of being damaged or destroyed, by gray squirrels, may apply to the department for a permit to kill the squirrels causing or threatening the damage or destruction.

(b) The department, upon satisfactory evidence of actual or immediately threatened damage or destruction of land or property, shall issue a revocable permit for the taking and disposition of the responsible squirrels, under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions.

(c) Gray squirrels taken under a permit issued pursuant to subdivision (b) shall not be sold or shipped from the premises on which they are taken, except pursuant to instructions from the department.

(d) No poison of any type may be used to take any gray squirrel pursuant to this section.

(e) The department shall designate the type of trap to be used to trap gray squirrels, ensuring that the designated trap is the most humane method available. The department may require trapped squirrels to be released in parks or other nonagricultural areas.

(f) It is unlawful for any person to violate the terms of any permit issued pursuant to this section.

Comment. Section 36015 restates the part of former Fish and Game Code Section 4181(a) applicable to gray squirrels without substantive change.

Note. Proposed Section 36015 is intended to restate the part of existing Fish and Game Code Section 4181(a) applicable to gray squirrels to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.”

(b)”

The references in existing Section 4181 to existing Section 4181.1 and to subdivisions (b) and (d) of Section 4181 have not been continued in proposed Section 36015, as those provisions do not apply to squirrels.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

TITLE 14. WHALE

TITLE 1. WHALES GENERALLY

Chapter 1. Preliminary Provisions

§ 37000. Classification

37000. For the purposes of this code:

(a) A whale is a marine mammal.

(b) A Pacific right whale (*Eubalaena sieboldi*) is a fully protected mammal.

§ 37005. Provisions not exclusive

- (a) Section 430.
(b) Section 16905.
(c) Section 28650.
(d) Section 32500.

Chapter 2. Orca

37050. This section shall be known, and may be cited, as the California Orca Protection Act.

- (1) (A) Except as provided in subparagraph (B) and subdivision (c), hold in captivity an orca, whether wild-caught or captive-bred, for any purpose, including, but not limited to, display, performance, or entertainment purposes.

- (2) Breed or impregnate any orca held in captivity in the state.

- (4) Export, transport, move, or sell an orca located in the state to another state or country unless otherwise authorized by federal law or if the transfer is to another facility within North America that meets standards comparable to those provided under the Animal Welfare Act (7 U.S.C. Sec. 2131 and following).

- (c) This section does not apply to an orca that is held by a bona fide educational or scientific institution for rehabilitation after a rescue or stranding or for research purposes. However, the department shall be notified immediately upon the rescue or acquisition of any orca, and an orca that is held for rehabilitation or research purposes shall be returned to the wild whenever possible. If return to the wild is

not possible, the orca may be used for educational presentations, but shall not be used for breeding, performance, or entertainment purposes.

(d) As used in this section, the following terms are defined as follows:

(1) “Educational presentation” means a live, scheduled orca display in the presence of spectators that includes natural behaviors, enrichment, exercise activities, and a live narration and video content that provides science-based education to the public about orcas.

(2) “Orca” means a killer whale (*Orcinus orca*).

(3) “Bona fide educational or scientific institution” means an institution that establishes through documentation any of the following:

(A) Educational or scientific tax exemption from the Internal Revenue Service or the institution’s national, state, or local tax authority.

(B) Accreditation as an educational or scientific institution from a qualified national, regional, state, or local authority for the institution’s location.

(C) Accreditation by a nationally or internationally recognized zoological or aquarium accreditation organization.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Comment. Section 37050 continues former Fish and Game Code Section 4502.5 without change.

TITLE 15. WILD PIG

CHAPTER 1. GENERAL PROVISIONS

§ 37100. Game mammal

37100. For the purposes of this code, a wild pig, including a feral pig and a European wild boar (genus *Sus*), is a game mammal.

Comment. Section 37100 continues the part of former Fish and Game Code Section 3950(a) applicable to wild pigs without substantive change.

§ 37105. “Wild pigs”

37105. For purposes of this title, “wild pig” means free-roaming pigs not distinguished by branding, ear marking, or other permanent identification methods.

Comment. Section 37105 continues former Fish and Game Code Section 4650 without substantive change, except that the definition is made applicable to the provisions that continue former Fish and Game Code Sections 4181, 4181.1, 4181.2, and 4188.

Note. Existing Section 4650 provides a definition of the term “wild pigs,” but limits the application of the definition to the provisions in the chapter of the existing code in which Section 4650 appears. (Those provisions are continued in Chapters 1 through 4 of this title.)

However, the term “wild pig” is used in several other provisions of the existing code, without definition. Among those provisions are existing Sections 4181, 4181.1, 4181.2, and 4188 (which

would be continued by the proposed provisions in Chapter 5 of this title), all relating to the taking of wild pigs that are damaging or injuring property. The Commission believes it would be minor substantive improvement to extend the application of the definition of the term “wild pig” to those provisions, and has therefore proposed a revision of this provision to achieve that objective.

The Commission invites comment on this revision. The Commission also invites comment on whether the definition of “wild pig” in this provision should be generalized to apply throughout the proposed law, and relocated with the other generally applicable definitional provisions in the proposed law.

§ 37110. Provisions not exclusive

37110. The provisions of this part are not intended to be exclusive. Other provisions that govern wild pigs include, but are not limited to, the following provisions:

(a) Section 8630.

(b) Section **10652**.

Comment. Section 37110 is new. It is added for drafting convenience.

CHAPTER 2. TAKE GENERALLY

§ 37150. Tag requirement

37150. It is unlawful to take any wild pig, except as provided in Section 37355 or 37360, without first obtaining a tag authorizing the taking of that wild pig in accordance with this title.

Comment. Section 37150 combines and continues the first clause of former Fish and Game Code Section 4181(a), and former Fish and Game Code Section 4652, without substantive change.


§ 37155. Tagging of wild pig

37155. (a) The holder of a wild pig tag shall keep the tag in his or her possession while hunting wild pig.

(b) Before the taking of any wild pig, the holder of a wild pig tag, except for wild pig tags issued through the Automated License Data System, shall legibly write or otherwise affix the holder’s hunting license number to the wild pig tag.

(c) Upon the killing of any wild pig, the date of the kill shall be clearly marked by the holder of the tag on both parts of the tag. Before transporting the pig, a tag shall be attached to the carcass by the holder of the tag. The holder of the wild pig tag shall immediately, upon harvesting a pig, notify the department in a manner specified by the commission.

Comment. Section 37155 continues former Fish and Game Code Section 4657 without substantive change.

 **Note.** The Commission invites comment on whether a more common term (e.g., “taking”) could be substituted for the word “harvesting” as used in existing Fish and Game Code Section 4657.

CHAPTER 3. TAGS

§ 37200. Design and issuance of wild pig tag

37200. The department may determine the design and type of information to be included on the wild pig tag and prescribe the procedures for the issuance and use of the tag.

Comment. Section 37200 continues former Fish and Game Code Section 4653 without change.

§ 37205. Obtaining tag

37205. (a) To obtain a wild pig tag, a person must be 12 years of age or older, and possess either a valid hunting license, or if a nonresident, a valid California nonresident hunting license.

(b) A person authorized to obtain a wild pig tag may obtain the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year, upon payment of the fee required by Section 37215.

Comment. Section 37205 restates the part of former Fish and Game Code Section 4654 that relates to prerequisites for obtaining a wild pig tag, without substantive change.

Note. Proposed Section 37205 is intended to restate the part of existing Fish and Game Code Section 4654 that relates to prerequisites for obtaining a wild pig tag, to clarify the meaning of that language, without changing its substantive effect. The remainder of Section 4654, relating to fees for wild pig tags, would be continued by proposed Section 37215.

Section 4654 reads as follows:

“4654. (a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag.

(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.”

The Commission invites comment on whether the restatement of the part of Section 4654 continued in proposed Section 37205 would cause any substantive change in the meaning of the provision.

§ 37210. Period of validity of tag

37210. Wild pig tags are valid only during that portion of the current hunting license year in which wild pigs may be taken or possessed in any area of the state.

Comment. Section 37210 continues former Fish and Game Code Section 4655 without change.

§ 37215. Fees for wild pig tag

37215. The fee for a wild pig tag shall be as follows:

(a) For a resident of the state, a base fee of fifteen dollars (\$15) per tag, adjusted under Section 3755.

(b) For a nonresident, a base fee of fifty dollars (\$50) per tag, adjusted under Section 3755.

Comment. Section 37215 restates the part of former Fish and Game Code Section 4654 that relates to prerequisites for obtaining a wild pig tag, without substantive change.

Note. Subdivision (a) of proposed Section 37215 is intended to restate the part of existing Fish and Game Code Section 4654 that relates to fees for wild pig tags, to clarify the meaning of that language, without changing its substantive effect. The remainder of Section 4654, relating to prerequisites for obtaining a wild pig tag, would be continued by proposed Section 37205.

Section 4654 reads as follows:

“4654. (a) Any resident of this state, 12 years of age or older, who possesses a valid hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifteen dollars (\$15), for each wild pig tag.

(b) Any nonresident, 12 years of age or older, who possesses a valid California nonresident hunting license, may procure the number of wild pig tags corresponding to the number of wild pigs that may legally be taken by one person during the license year upon payment of a base fee of fifty dollars (\$50), for each wild pig tag.

(c) The base fees specified in this section are applicable to the 2004 license year, and shall be adjusted annually thereafter pursuant to Section 713.”

The Commission invites comment on whether the restatement of the part of Section 4654 continued in subdivision (a) of proposed Section 37215 would cause any substantive change in the meaning of the provision.

§ 37220. Deposit of fees

37220. All revenues from the sale of wild pig tags, including any fundraising tags, shall be deposited in the Big Game Management Account established in Section 31900 to permit separate accountability for the receipt and expenditure of these funds.

Comment. Section 37220 continues the part of the first sentence of former Fish and Game Code Section 3953(b) applicable to wild pigs without substantive change.

Note. This proposed section together with proposed Sections 31905 and 31930 appear to render the existing Section 4656 superfluous, and that section would not be continued in the proposed law. Existing Section 4656 reads as follows:

“4656. Revenues received pursuant to this chapter shall be deposited in the Big Game Management Account established in Section 3953. These funds shall be available for expenditure by the department as set forth in Section 3953. The department shall maintain all internal accounting measures necessary to ensure that all restrictions on these funds are met.”

The Commission invites comment on whether the discontinuation of existing Section 4656 in the proposed law is appropriate.

CHAPTER 4. POPULATION MANAGEMENT

§ 37300. Management plan

37300. (a) The department shall prepare a plan for the management of wild pigs. Under the plan, the status and trend of wild pig populations shall be determined

and management units shall be designated within the state. The plan may establish pig management zones to address regional needs and opportunities. In preparing the plan, the department shall consider available, existing information and literature relative to wild pigs.

(b) The plan may include all of the following:

(1) The distribution and abundance of wild pigs, including feral pigs and European wild boars (genus *Sus*).

(2) A survey of range conditions.

(3) Recommendations for investigations and utilization of wild pigs.

(4) Encouraging mitigation of depredation by sport hunting pursuant to this title.

(5) Live trapping and relocation of wild pigs to areas suitable and accessible to mitigation of depredation, with the consent of the landowner and after prior consultation with adjacent landowners who, in the department's opinion may be impacted, pursuant to this title.

Comment. Section 37300 continues former Fish and Game Code Section 4651 without substantive change.

Notes. (1) The intended meaning of the words "pursuant to this chapter" at the end of existing Fish and Game Code Section 4651(a)(5) (which would be continued by the words "pursuant to this title" at the end of proposed Section 37300(b)(5)) is unclear, as there are no provisions in that referenced chapter of the existing code that relate to the trapping or relocation of wild pigs.

The Commission invites comment on this issue.

CHAPTER 5. TAKE TO PROTECT PROPERTY

§ 37350. "Damage"

37350. (a) For the purposes of this chapter, "damage" caused by a wild pig means loss or harm resulting from injury to person or property.

(b) The department shall develop statewide guidelines to aid in determining the damage caused by wild pigs. The guidelines shall consider various uses of the land impacted by pigs.

Comment. Section 37350 continues former Fish and Game Code Section 4181.2 without substantive change.

§ 37355. Protection of property

37355. (a) Notwithstanding Section 37150, a wild pig encountered in the act of inflicting injury to, molesting, pursuing, worrying, or killing livestock, or damaging or destroying, or threatening to immediately damage or destroy, land or other property, including, but not limited to, rare, threatened, or endangered native plants, wildlife, or aquatic species, may be taken immediately by any of the following persons:

(1) The owner of the livestock, land, or property.

(2) The owner's agent or employee.

(3) An agent or employee of any federal, state, county, or city entity when acting in official capacity.

1 (b) The person taking the wild pig shall report the taking no later than the next
2 working day to the department and shall make the carcass available to the
3 department.

4 (c) Unless otherwise directed by the department and notwithstanding Section
5 37155, a person taking a wild pig pursuant to this section, or to whom the carcass
6 of a wild pig taken pursuant to this section is transferred pursuant to subdivision
7 (e), may possess the carcass of the wild pig, or may transfer the carcass to another
8 person or entity, if the transfer is made for no compensation. A person who
9 arranges a transfer pursuant to this subdivision shall be deemed to be in
10 compliance with Section 31800.

11 (d) A violation of this section is punishable pursuant to subdivision (b) of
12 Section 4400. It is the intent of the Legislature that nothing in this section shall be
13 interpreted to authorize a person to take wild pig pursuant to this section in
14 violation of a state statute or regulation, or a local zoning or other ordinance that is
15 adopted pursuant to other provisions of law and that restricts the discharge of a
16 firearm.


17 (e) The department shall make a record of each report made pursuant to
18 subdivision (b), and may have an employee of the department investigate the
19 taking or cause the taking to be investigated. The person taking a wild pig shall
20 provide information as deemed necessary by the department. Upon completion of
21 an investigation, the investigator may, upon a finding that the requirements of this
22 section have been met with respect to a wild pig taken under subdivision (a), issue
23 a written statement to the person taking the wild pig, confirming that the
24 requirements of this section have been met.

25 (f) The department shall provide a person who reports taking wild pigs pursuant
26 to subdivision (b) with written information that sets forth available options for
27 wild pig control, including, but not limited to, depredation permits, allowing
28 periodic access to licensed hunters, and holding special hunts authorized pursuant
29 to Section 37365. The department may maintain and make available to these
30 persons lists of licensed hunters interested in wild pig hunting, and lists of
31 nonprofit organizations available to take possession of the carcasses of
32 depredating wild pigs.

33 **Comment.** Subdivisions (a) through (d) of Section 37355 continue former Fish and Game
34 Code Section 4181.1(b) without substantive change.

35 Subdivision (e) continues the part of former Fish and Game Code Section 4181.1(c) applicable
36 to wild pigs without substantive change.

37 Subdivision (f) continues the part of former Fish and Game Code Section 4181(c) applicable to
38 former Fish and Game Code Section 4181.1(b) without substantive change.

39  **Note.** A sentence within existing Fish and Game Code Section 4181.1(b) (which would be
40 continued by the first sentence of proposed Section 37355(d)) indicates that a violation of Section
41 4181.1(b) “is punishable pursuant to Section 12000.” However, existing Section 12000 does not
42 specify any punishment that would otherwise apply to a violation of Section 4181.1, nor does it
43 specify a default punishment for a violation of the code.

44 The Commission believes it likely the section intended to be referenced was existing Section
45 12002, which in subdivision (a) does provide a default punishment for an unspecified code

violation. Proposed Section 37355(d) would revise the reference to refer to the provision of the proposed law that would continue existing Section 12002(a).

The Commission invites comment on this revision.

§ 37360. Depredation permit

37360. (a) Except as provided in Section 37355, an owner or tenant of land or property that is being damaged or destroyed, or is in danger of being damaged or destroyed, by wild pig, may apply to the department for a permit to kill the wild pig causing or threatening the damage or destruction.

(b) The department, upon satisfactory evidence of actual or immediately threatened damage or destruction of land or property, shall issue a revocable permit for the taking and disposition of the responsible wild pig, under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions.

(c) Wild pig taken under a permit issued pursuant to subdivision (b) shall not be sold or shipped from the premises on which they are taken, except pursuant to instructions from the department.

(d) The department shall provide an applicant for a depredation permit with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 37365. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting, and lists of nonprofit organizations available to take possession of the carcasses of depredating wild pigs.

(e) It is unlawful for any person to violate the terms of any permit issued pursuant to this section.

Comment. Subdivisions (a) through (c) and (e) of Section 37360 restate the part of former Fish and Game Code Section 4181(a) applicable to wild pigs without substantive change.

Subdivision (d) continues the part of former Fish and Game Code Section 4181(c) applicable to former Fish and Game Code Section 4181(a) without substantive change.

Note. Proposed Section 37360(a)-(c) and (e) are intended to restate the part of existing Fish and Game Code Section 4181(a) applicable to wild pig to clarify the meaning of that language, without changing its substantive effect. Existing Section 4181 reads as follows:

“4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d), the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other

nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b)....”

The references in existing Section 4181 to subdivisions (b) and (d) of Section 4181 have not been continued in proposed Section 37360, as those provisions do not apply to wild pigs.

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 37365. Access by licensed hunters

37365. (a) If a landowner or tenant applies for a permit under Section 37360 to take wild pigs, the department shall inform the applicant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to **Article 3 (commencing with Section 1570) of Chapter 5 of Division 2** to control wild pigs.

(b) The commission, in lieu of a permit described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, may pursuant to appropriate regulation authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

Comment. Section 37365 restates the part of former Fish and Game Code Section 4188 applicable to wild pigs without substantive change.

Note. Proposed Section 37365 is intended to restate the part of existing Fish and Game Code Section 4188 applicable to wild pigs to improve its clarity, without changing its substantive effect. The existing provision reads as follows:

“4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

(b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

TITLE 16. WILD RODENT

§ 37450. Classification

37450. For the purposes of this code:

- 1 (a) A tree squirrel (genus *Sciurus* and *Tamiasciurus*) is a game mammal.
2 (b) A Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) is a fully
3 protected mammal.
4 (c) A salt-marsh harvest mouse (*Reithrodontomys raviventris*) is a fully
5 protected mammal.

6 **Comment.** Subdivision (a) of Section 37450 continues the part of former Fish and Game Code
7 Section 3950(a) applicable to tree squirrels without substantive change.

8 Subdivision (b) continues former Fish and Game Code Section 4700(b)(1) without substantive
9 change.

10 Subdivision (c) continues former Fish and Game Code Section 4700(b)(7) without substantive
11 change.

12 **§ 37455. Prohibitions**

13 37455. (a) It is unlawful to knowingly capture for sale, transport for sale or sell a
14 wild rodent, except as provided in Section 1700, 1705, 1710, 1745, 9200, or 9210.

15 (b) As used in this section, “wild rodent” means a wild ground squirrel,
16 chipmunk, rat, mouse, or any other member of the order Rodentia native to
17 California, except muskrat or beaver.

18 **Comment.** Subdivision (a) of Section 37455 continues former Fish and Game Code Section
19 2576 without substantive change.

20 Subdivision (b) continues former Fish and Game Code Section 2575 without substantive
21 change.

22 **Note.** Existing Fish and Game Code Section 2576 (which would be continued by proposed
23 Section 37455) reads as follows:

24 “2576. It is unlawful to knowingly capture for sale, transport for sale or sell wild rodents,
25 except as provided in Article 1.5 (commencing with Section 1000) of Chapter 3 of Division 2.”

26 There is no longer any “Article 1.5” in Chapter 3 of Division 2 of the existing code. At the time
27 Section 2576 was enacted in 1971, there did exist an Article 1.5 in the indicated chapter and
28 division, which contained many of the sections that are now in Article 1 (commencing with
29 Section 1000) of Chapter 3 of Division 2 of the existing code. However, since 1971, new sections
30 have been added to that article, and some of the sections that were in that article in 1971 have
31 since been amended.

32 Proposed Section 37455 would replace the cross-reference to the now non-existent “Article
33 1.5” with the sections contained in that former article that appear to have any relevance to the
34 substance of existing Section 2576.

35 **The Commission invites comment on whether the cross-reference in proposed Section**
36 **37455 specifying the exceptions to the proposed section should be revised in any way.**

37 **§ 37460. Trapping**

38 37460. Except for fully protected mammals or species that are listed pursuant to
39 **Chapter 1.5 (commencing with Section 2050) of Division 3**, nothing in this code
40 or a regulation adopted pursuant to this code shall prevent or prohibit a person
41 from trapping any of the following animals:

- 42 (a) Gopher.
43 (b) House mouse.
44 (c) Mole.

1 (d) Rat.

2 (e) Vole.

3 **Comment.** Section 37465 continues former Fish and Game Code Section 4005(f) without
4 substantive change.

5 DIVISION 10. FISH

6 PART 1. GENERAL PROVISIONS

7 **§ 37800. Governance by other provisions**

8 37800. Animals governed by this division are also governed by other provisions
9 of this code, including but not limited to Divisions 6 (commencing with Section
10 8000) and 7 (commencing with Section 23300).

11 **Comment.** Section 37800 is new. It is added for drafting convenience.

12 **§ 37805. Scope of commercial provisions**

13 37805. The provisions of this division that are expressly identified as
14 commercial provisions apply to the taking and possession of fish for any
15 commercial purpose. Those commercial provisions do not apply to activities
16 governed by Part 1 (commencing with Section 23300) of Division 7.

17 **Comment.** Section 37805 continues the part of former Fish and Game Code Section 7600
18 applicable to the provisions of this division without substantive change.

19 PART 2. DISEASE CONTROL

20 **§ 37950. Application of title**

21 37950. (a) This title applies to all fish, including, but not limited to, fish being
22 imported or transported.

23 (b) This chapter does not apply to activities governed by Part 1 (commencing
24 with Section 23300) of Division 7.

25 **Comment.** Section 37950 continues the part of former Fish and Game Code Section 6300
26 applicable to fish without substantive change.

27 **§ 37955. Authorized entry by department**

28 37955. The department may enter at any time any vehicle, container, warehouse,
29 depot, ship, or growing area where any fish are held, transported, or stored, for the
30 purpose of making a regulatory inspection to ascertain whether those fish are
31 infected, diseased, or parasitized, or to determine if aquaculture products are being
32 or have been legally imported, transported, or possessed.

33 **Comment.** Section 37955 continues the part of former Fish and Game Code Section 6301
34 applicable to fish without change.

1 **§ 37960. Public nuisance**

2 37960. Except as otherwise provided in Part 1 (commencing with Section
3 23300) of Division 7, all fish found to be infected, diseased, or parasitized are a
4 public nuisance and shall be summarily destroyed by the department.

5 **Comment.** Section 37960 continues the part of former Fish and Game Code Section 6302
6 applicable to fish without substantive change.

7 **§ 37965. Conditional destruction**

8 37965. All fish that the department determines are merely deleterious to fish,
9 amphibians, aquatic plants, or aquatic animal life, shall be destroyed by the
10 department, unless the owner or person in charge of the fish ships them out of the
11 state within a period of time to be specified by the department.

12 **Comment.** Section 37965 continues the part of former Fish and Game Code Section 6303
13 applicable to fish without substantive change.

14 **§ 37970. Posting of notices**

15 37970. (a) If the department finds any infected, diseased, or parasitized fish
16 within this state, the department shall post notices describing, as nearly as
17 possible, the boundaries of the area within which the fish are found, and shall state
18 the period during which the taking, carrying, and transportation of the fish from
19 the area shall be unlawful.

20 (b) The fact of posting the notices shall be published once a week for four
21 successive weeks in some newspaper of general circulation in the county in which
22 the infected area is situated, and, if there is no newspaper of general circulation in
23 that county, then in a newspaper of general circulation published in an adjoining
24 county.

25 **Comment.** Section 37970 continues the part of former Fish and Game Code Section 6304
26 applicable to fish without substantive change.

27 **§ 37975. Prohibited transportation within state**

28 37975. It is unlawful to carry or cause to be carried from one point in this state
29 which has been posted according to the provisions of this article, to any other
30 point in this state, any infected, diseased, or parasitized fish.

31 **Comment.** Section 37975 continues the part of former Fish and Game Code Section 6305
32 applicable to fish without substantive change.

33 **§ 37980. Expense of examination**

34 37980. (a) Except as provided in subdivision (b), the expense of any
35 examination of any fish made necessary by the provisions of this code shall be
36 borne by the owner of the fish, or the person or persons importing the fish into this
37 state.

38 (b) The department may assume that expense in the case of fish imported to
39 provide fishing under the authority of a sport fishing license in the public waters of
40 this state.

1 **Comment.** Section 37980 continues the part of former Fish and Game Code Section 6306
2 applicable to fish without substantive change.

3 PART 3. CLASSES OF FISH

4 TITLE 1. FULLY PROTECTED FISH

5 **§ 38200. Prohibition on take and possession**

6 38200. (a) Except as provided in this section or **Section 2081.6, 2081.7, 2089.7,**
7 **or 2835**, a fully protected fish shall not be taken or possessed at any time.

8 (b) No provision of this code or any other law shall be construed to authorize the
9 issuance of a permit or license to take a fully protected fish, and no permit or
10 license previously issued shall have force or effect for that purpose. However, the
11 department may authorize the taking of a fully protected fish for necessary
12 scientific research, including efforts to recover fully protected, threatened, or
13 endangered species.

14 (c) Before authorizing the take of a fully protected fish, the department shall
15 make an effort to notify all affected and interested parties to solicit information
16 and comments on the proposed authorization. The notification shall be published
17 in the California Regulatory Notice Register and be made available to each person
18 who has notified the department, in writing, of his or her interest in fully protected
19 species and who has provided an email address, if available, or postal address to
20 the department. Affected and interested parties shall have 30 days after
21 notification is published in the California Regulatory Notice Register to provide
22 relevant information and comments on the proposed authorization.

23 (d) A legally imported fully protected fish may be possessed under a permit
24 issued by the department.

25 (e) Except as otherwise provided in Section 597 of the Penal Code, the
26 punishment for a violation of this section is a fine of not more than five thousand
27 dollars (\$5,000) or imprisonment in the county jail for not more than one year, or
28 both the fine and imprisonment.

29 (f) The judge before whom any person is tried for a violation of this section
30 may, in the court's discretion and upon the conviction of that person, order the
31 forfeiture of any proceeds resulting from the taking of fully protected fish.

32 (g) As used in this section, "scientific research" does not include an action taken
33 as part of specified mitigation for a project, as defined in Section 21065 of the
34 Public Resources Code.

35 **Comment.** Subdivisions (a)-(d) and (g) of Section 38200 continues former Fish and Game
36 Code Section 5515(a) without substantive change.

37 Subdivision (e) continues former Fish and Game Code Section 12008(e) without substantive
38 change.

39 Subdivision (f) continues the part of former Fish and Game Code Section 12159.5 applicable to
40 fully protected fish without substantive change.

TITLE 2. GROUND FISH

CHAPTER 1. GENERAL PROVISIONS [*RESERVED*]

CHAPTER 2. COMMERCIAL PROVISIONS

§ 38350. Application of title

38350. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 38350 is new. It is added for drafting convenience.

§ 38355. Federal groundfish regulations

38355. It is unlawful for any person possessing or operating any type of net, trap, or line that is subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C., Sec. 1801 et seq.) to possess or land any load of fish in violation of those federal groundfish regulations.

Comment. Section 38355 continues former Fish and Game Code Section 8607 without change.

§ 38360. Marine species of finfish

38360. To the extent not in conflict with Section 38355, marine species of finfish that are classified as groundfish may be taken under the regulations of the commission.

Comment. Section 38360 continues former Fish and Game Code Section 8403(a) without substantive change.

§ 38365. Retention of landing receipt

38365. In addition to the requirements of Sections 21015, 21100, 21110, and 21150, any person landing groundfish subject to federal groundfish regulations adopted pursuant to the Magnuson Fishery Conservation and Management Act (16 U.S.C. Sec. 1801 et seq.) shall keep a copy of the landing receipt on board the fishing vessel throughout, and for 15 days following, each period for which cumulative landings by individual vessels are limited.

Comment. Section 38365 continues former Fish and Game Code Section 8046.1 without substantive change.

PART 4. ANCHOVIES

TITLE 1. ANCHOVIES GENERALLY

§ 38450. Provisions not exclusive

38450. The provisions of this part are not intended to be exclusive. Other provisions that may govern anchovies include, but are not limited to, the following provisions:

(a) Section 15915.

(b) Section 16475.

(c) Section 20710.

(d) Section 21015.

Comment. Section 38450 is new. It is added for drafting convenience.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 38500. Application of title

38500. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 38500 is new. It is added for drafting convenience.

CHAPTER 2. MANAGEMENT OF RESOURCE

§ 38550. Policy declaration

38550. (a) It is the policy of the State of California that the anchovy resource shall be managed in a manner that insures the continued abundance of the species. To that end, the department shall conduct, or have others conduct, annual anchovy egg-larvae surveys or any other annual surveys, research, and analyses necessary to insure that an accurate biomass estimate is made.

(b) This section shall become operative, and activities shall be carried out pursuant to this section, only in the event and to the extent that funding is made available for those activities by the federal government.

Comment. Section 38550 continues former Fish and Game Code Section 8190 without substantive change.

§ 38555. Area south of Point Mugu

38555. (a) In any district or part of a district lying south of a line drawn east and west through Point Mugu, anchovies may be taken in any quantity for bait or for human consumption in a fresh state, or, by contract with the department, for hatchery food, not to exceed 500 tons per year.

1 (b) Anchovies taken south of the line described in subdivision (a), in waters not
2 less than three nautical miles from the nearest point of land on the mainland shore,
3 and anchovies taken north of that line in any waters, may be possessed,
4 transported, sold, or otherwise dealt with in any district or part of a district south
5 of that.

6 (c) The operator of any boat engaged in taking anchovies in waters south of the
7 line described in subdivision (a) shall at all times while operating the boat identify
8 it by displaying on an exposed part of the superstructure, amidships on each side
9 and on top of the house visible from the air, the Department of Fish and Wildlife
10 registration number of the boat, in 14-inch black numerals on white background.

11 **Comment.** Subdivision (a) of Section 38555 continues former Fish and Game Code Section
12 8180 without change.

13 Subdivision (b) continues former Fish and Game Code Section 8181 without substantive
14 change.

15 Subdivision (c) continues former Fish and Game Code Section 8182 without substantive
16 change.

17 **§ 38560. Humboldt Bay**

18 38560. (a) No anchovies may be taken for any purpose in Humboldt Bay, except
19 under the following conditions:

20 (1) Anchovies may be taken for live bait between May 1 and December 1 and
21 may be taken for dead bait between May 1 and August 31.

22 (2) The operator of a vessel may take anchovies only for use in his or her own
23 fishing operation, except that the operator may make incidental sales of anchovies
24 so taken to local sport fishermen for their use as bait. This paragraph does not
25 prevent the cooperative effort of two or more vessel operators or their crews
26 working together with one net if each operator has complied with the notification
27 requirement in paragraph (3).

28 (3) An observer who is an employee of the department shall inspect any bait
29 operation and may halt that operation if the operation cannot be conducted without
30 adversely affecting the game species of the bay. Notification of all bait operations
31 shall be dispatched so as to be received by the department at least 12 hours prior to
32 the commencement of the operation.

33 (4) Anchovies may be taken in Districts 2580 and 2585 only north of a line
34 extending through channel markers 8 and 9 in Humboldt Bay.

35 (5) Not more than 15 tons of anchovies may be taken between May 1 and
36 August 31 of each year and not more than 15 tons may be taken between
37 September 1 and December 1 of each year.

38 (6) Only bait nets, as defined in Section 235, shall be used to take anchovies.

39 (7) Any game fish caught incidentally in a bait net intended to catch anchovies
40 shall be released by use of a hand scoop net or by dipping the cork line.

41 (b) An accurate record of all fishing operations pursuant to this section shall be
42 kept and is subject to inspection by the department.

(c) The commission shall adopt any other regulation it determines is necessary to protect the Humboldt Bay anchovy resource.

Comment. Section 38560 continues former Fish and Game Code Section 8183 without substantive change.

§ 38565. Revocation or suspension of license

38565. (a) In addition to any other applicable penalty, the commercial fishing license of the master of a vessel may be revoked or suspended by the commission, when requested by the department, for a period not to exceed one year, upon the second conviction in three years of the master or the master's agent, servant, employee, or any other person acting under the master's direction or control, for a violation of any provision of this chapter.

(b) A master's license shall not be revoked unless both the first and second convictions are for a violation by the master or a violation occurring when the person convicted was acting as the master's agent, servant, employee, or acting under the master's direction or control.

Comment. Section 38565 continues the part of former Fish and Game Code Section 12002.8(d) and (e) applicable to the provisions of this chapter, without substantive change.

CHAPTER 3. USE IN CANNERY

§ 38600. Unloading for use in cannery

38600. (a) No anchovies intended for or used in any cannery shall be unloaded from any vessel, except at a weighing or measuring device approved by the Bureau of Weights and Measures.

(b) Those anchovies shall be weighed by a public weighmaster licensed as an individual under the laws of this state, and a receipt as to that weight shall be immediately issued by the weighmaster to the commercial fisherman at the time of receipt of the products.

(c) Copies of the receipt shall be handled in the manner provided in Title 10 (commencing with Section 20900) of Part 6 of Division 6.

Comment. Section 38600 continues the part of former Fish and Game Code Section 7702.1 applicable to anchovies without substantive change.

PART 5. BARRACUDA

TITLE 1. BARRACUDA GENERALLY

§ 38700. Provisions not exclusive

38700. The provisions of this part are not intended to be exclusive. Other provisions that may govern barracuda include, but are not limited to, the following provisions:

(a) Section 21950.

1 **(b) Section 10664.**

2 **(c) Section 10667.**

3 **Comment.** Section 38700 is new. It is added for drafting convenience.

4 **§ 38705. Delivery of barracuda taken from waters off coast of Mexico**

5 38705. (a) Barracuda taken in waters lying south of the maritime boundary line
6 between the United States and Mexico, with that maritime boundary line
7 including, but not limited to, the federal Exclusive Economic Zone boundary, may
8 be delivered to California ports aboard boats, including boats carrying purse seine
9 or round haul nets, in accordance with those regulations as the commission may
10 make governing the inspection and marking of those fish imported into this state.
11 The cost of that inspection and marking shall be paid by the importer.

12 (b) Barracuda taken in Mexico shall not be imported, unless legally taken and
13 legally possessed, and a declaration is submitted to the department pursuant to
14 Section 28425.

15 **Comment.** Section 38705 continues the part of former Fish and Game Code Section 2362
16 applicable to barracuda without substantive change.

17 **TITLE 2. COMMERCIAL PROVISIONS**

18 **§ 38750. Application of title**

19 38750. For purposes of Section 37805, the provisions in this title are commercial
20 provisions.

21 **Comment.** Section 38750 is new. It is added for drafting convenience.

22 **§ 38755. Size restrictions**

23 38755. (a) Barracuda shall be measured from the tip of the lower jaw to the end
24 of the longer lobe of the tail.

25 (b) Barracuda measuring equal to or greater than 28 inches in length may be
26 taken with hook and line at any time.

27 (c) Barracuda measuring less than 28 inches in length may not be sold or
28 purchased, except that not more than five barracuda per day of any length may be
29 possessed by a commercial fisherman for noncommercial use, if taken incidentally
30 while engaged in commercial fishing.

31 **Comment.** Subdivision (a) of Section 38755 continues the part of former Fish and Game Code
32 Section 8386 applicable to barracuda without substantive change.

33 Subdivision (b) continues the part of former Fish and Game Code Section 8382 applicable to
34 barracuda without substantive change.

35 Subdivision (c) continues the part of former Fish and Game Code Section 8384 applicable to
36 barracuda without substantive change.

37 **§ 38760. Use of purse seines or round haul nets**

38 38760. (a) It is unlawful to use any purse seine or round haul net to take a
39 barracuda.

(b) It is unlawful to possess a barracuda, except those taken south of the international boundary between the United States and Mexico, and imported into the state under regulations of the commission as provided in Section 38705, on any boat carrying or using any purse seine or round haul net, including, but not limited to, a bait net as described in Section 235.

(c) Notwithstanding subdivision (b), the department may issue permits to hook and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of taking bait for their own use only.

Comment. Section 38760 continues the parts of former Fish and Game Code Section 8623(a), (b), and (e) applicable to barracuda without substantive change.

Note. The portion of existing Fish and Game Code Section 8623(a) and (b) that applies to barracuda would be continued by proposed Section 38760(a) and (b).

Existing Section 8623 also includes a disclaimer in subdivision (e) that, by its terms, applies to all provisions of that section (“Notwithstanding the provisions of this section...”)

However, despite the broad wording of this disclaimer, the Commission’s analysis suggests that the substantive portion of subdivision (e) logically applies only to subdivision (b). Proposed Section 38760(c) would state that specific application expressly.

The Commission invites comment on whether that expressly stated application would cause any problems.

PART 6. BASS

TITLE 1. BASS GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 38800. Provisions not exclusive

38800. The provisions of this part are not intended to be exclusive. Other provisions that may govern bass include, but are not limited to, the following provisions:

(a) Section 12105.

(b) Section 12165.

(c) Section 12305.

(d) Section 12310.

(e) Section 13900.

(f) Section 14875.

(g) Section 15540.

(h) Section 18040.

(i) Section 18045.

(j) Section 18050.

(k) Section 18365.

(l) Section 18815.

(m) Section 18820.

- 1 (n) Section 18825.
- 2 (o) Section 21950.
- 3 (p) Section 20105.
- 4 (q) Section 23905
- 5 (r) Section 24000
- 6 (s) Section 25700.
- 7 (t) **Section 10664.**
- 8 (u) **Section 10667.**
- 9 **Comment.** Section 38800 is new. It is added for drafting convenience.

10 CHAPTER 2. SPECIFIC TYPES OF BASS

11 § 38850. Black bass

12 38850. Black bass lawfully taken may be carried or transported into and
13 possessed in an area where the season is closed.

14 **Comment.** Section 38850 continues the part of former Fish and Game Code Section 2360
15 applicable to black bass without change.

16 § 38855. Giant seabass

17 38855. Giant seabass (*Stereolepis gigas*) may not be taken under a sport fishing
18 license except by hook and line when engaged in the taking of other fish. This
19 section, and any regulation adopted by the commission relating to this section,
20 shall supersede Section 28425.

21 **Comment.** Section 38855 continues former Fish and Game Code Section 7350 without
22 substantive change.

23 § 38860. Spotted bass

24 38860. Spotted bass lawfully taken may be carried or transported into and
25 possessed in an area where the season is closed.

26 **Comment.** Section 38860 continues the part of former Fish and Game Code Section 2360
27 applicable to spotted bass without change.

28 § 38865. Striped bass

29 38865. (a) Except as provided in subdivision (b), striped bass may be
30 transported or carried out of or into this state only as follows:

31 (1) A resident of California, or the holder of a valid nonresident California sport
32 fishing license, lawfully taking striped bass from the Colorado River or from the
33 Arizona shore of that river, may transport or carry the fish taken into California.

34 (2) A resident of Arizona, or the holder of a valid nonresident Arizona sport
35 fishing license, lawfully taking striped bass from the Colorado River or from the
36 California shore of that river, may transport or carry the fish taken into Arizona.

37 (b) Striped bass legally taken in another state that permits the sale of that fish
38 may be imported into this state under regulations of the commission. Before the

commission adopts any regulation pursuant to this section, a public hearing shall be held in the San Francisco or Sacramento area.

Comment. Subdivision (a) of Section 38865 restates former Fish and Game Code Section 2359 without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 2363 applicable to striped bass without change.

Note. Proposed Section 38865(a) is intended to restate existing Fish and Game Code Section 2359 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“Except as provided in Section 2363, no striped bass may be transported or carried out of or into this state, except striped bass taken from the Colorado River by sportfishing licensees to the extent and in the manner following:

(a) A resident of California, or the holder of a valid nonresident California sportfishing license, lawfully taking such fish on the waters or from the Arizona shore of the river may transport or carry such fish into California.

(b) A resident of Arizona, or the holder of a valid nonresident Arizona sportfishing license, lawfully taking such fish on the waters or from the California shore of the river may transport or carry such fish into Arizona.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of existing Section 2359.

§ 38870. White bass

38870. In addition to Section 25415, it is unlawful to transport or possess any live white bass (*Marone chrysops*), whether taken within or without the state, unless it is first submitted for inspection to, and written permission is obtained from, the department.

Comment. Section 38870 continues former Fish and Game Code Section 6400.5 without substantive change.

§ 38875. White sea bass

38875. (a) White sea bass taken in waters lying south of the maritime boundary line between the United States and Mexico, with that maritime boundary line including, but not limited to, the federal Exclusive Economic Zone boundary, may be delivered to California ports aboard boats, including boats carrying purse seine or round haul nets, in accordance with those regulations as the commission may make governing the inspection and marking of those fish imported into this state. The cost of that inspection and marking shall be paid by the importer.

(b) White sea bass taken in Mexico shall not be imported unless legally taken and legally possessed, and a declaration is submitted to the department pursuant to Section 28425.

(c) Any person who takes, possesses aboard a boat, or lands any white sea bass for a commercial purpose, in ocean waters south of a line extending due west from Point Arguello, shall have a valid commercial fishing ocean enhancement validation issued to that person that has not been suspended or revoked.

Comment. Subdivisions (a) and (b) of Section 38875 continues the part of former Fish and Game Code Section 2362 applicable to white sea bass without substantive change.

1 Subdivision (c) continues former Fish and Game Code Section 6596.1(c) without substantive
2 change.

3 CHAPTER 3. BLACK BASS CONSERVATION AND MANAGEMENT ACT OF 1980

4 § 38900. Name of act

5 38900. This chapter shall be known as the Black Bass Conservation and
6 Management Act of 1980.

7 **Comment.** Section 38900 continues former Fish and Game Code Section 1740 without
8 substantive change.

9 § 38905. Declaration of preservation

10 38905. The Legislature hereby finds and declares that it is the policy of the state
11 to preserve and enhance black bass resources and to manage black bass
12 populations to provide satisfactory recreational opportunities to the public.

13 **Comment.** Section 38905 continues former Fish and Game Code Section 1741 without
14 change.

15 § 38910. Declaration relating to funding

16 38910. The Legislature further finds and declares that the black bass
17 management program components specified in this chapter are a continuation of
18 the department's existing warmwater fisheries program, and, as such, shall be
19 funded from existing department budgetary resources.

20 **Comment.** Section 38910 continues former Fish and Game Code Section 1742 without
21 change.

22 § 38915. Components of management program

23 38915. (a) The department's black bass management program shall include, but
24 not be limited to, the following components:

25 (1) The department shall determine the angler harvest of black bass populations
26 and shall recommend to the commission the changes in angling regulations for
27 black bass that would be necessary to prevent or correct overharvest.

28 (2) The department shall consider recommending to the commission catch and
29 release regulations for black bass, including minimum or maximum size
30 restrictions and management for trophy-sized black bass in some waters.

31 (3) The department shall consider the suitability of the many different species,
32 subspecies, and strains of black bass when management programs are formulated.

33 (4) The department shall improve shoreline habitat for black bass in waters
34 where insufficient habitat exists and shall encourage reservoir operating agencies
35 to carry out shoreline habitat improvement projects.

36 (b) For the purposes of this section, "black bass" means fishes of the
37 Centrarchidae family.

38 **Comment.** Section 38915 continues former Fish and Game Code Section 1743 without
39 change.

1 TITLE 2. COMMERCIAL PROVISIONS

2 CHAPTER 1. PRELIMINARY PROVISIONS

3 § 38950. Application of title

4 38950. For purposes of Section 37805, the provisions in this title are commercial
5 provisions.

6 **Comment.** Section 38950 is new. It is added for drafting convenience.

7 CHAPTER 2. STRIPED BASS

8 § 39000. Take with purse or round haul net

9 39000. Striped bass may not be taken with a purse or round haul net.

10 **Comment.** Section 39000 continues the part of former Fish and Game Code Section 8756
11 applicable to striped bass without substantive change.

12 § 39005. Required return to water

13 39005. (a) Any striped bass that is taken in any type of net shall, regardless of its
14 condition, be immediately freed and removed from the net by the fisherman, and
15 immediately returned to the water without further harm.

16 (b) A commercial fisherman shall not have any striped bass, whether dead or
17 alive, in his or her possession, at any time when conducting netting operations or
18 when going to or from those operations, except when releasing a striped bass from
19 a net.

20 (c) The return of striped bass to the water pursuant to this section is not
21 deterioration, waste, or spoilage of fish for purposes of Section 14310.

22 **Comment.** Section 39005 continues the part of former Fish and Game Code Section 8370
23 applicable to striped bass without substantive change.

24 § 39010. Possession, offer for sale, sale, or purchase

25 39010. Striped bass may be possessed, offered for sale, sold, or purchased, only
26 under the following conditions:

27 (a) If the striped bass is taken or possessed by, and is the cultured progeny of, an
28 aquaculturist registered under Section 23605, the striped bass may be possessed,
29 offered for sale, sold, or purchased subject to regulations of the commission.

30 (b) If the striped bass is taken legally in another state that permits its sale, and
31 lawfully imported under Section 38865, the striped bass may be possessed, offered
32 for sale, sold, or purchased.

33 **Comment.** Section 39010 continues former Fish and Game Code Section 8371(a) and (b)
34 without substantive change.

CHAPTER 3. WHITE SEA BASS

§ 39050. Undersized white sea bass

39050. It is unlawful to take, possess, sell, or purchase any white sea bass less than 28 inches in length, measured from the tip of the lower jaw to the end of the longer lobe of the tail.

Comment. Section 39050 continues former Fish and Game Code Section 8383.5 without change.

§ 39055. Use of purse seines or round haul nets

39055. (a) It is unlawful to use any purse seine or round haul net to take a white sea bass.

(b) It is unlawful to possess a white sea bass, except those taken south of the international boundary between the United States and Mexico, and imported into the state under regulations of the commission as provided in Section 38875, on any boat carrying or using any purse seine or round haul net, including, but not limited to, a bait net as described in Section 235.

(c) Notwithstanding subdivision (b), the department may issue permits to hook and line commercial fishermen to possess a bona fide bait net on their vessels for the purpose of taking bait for their own use only.

Comment. Section 39055 continues the parts of former Fish and Game Code Section 8623(a), (b), and (e) applicable to white sea bass without substantive change.

Note. The portion of existing Fish and Game Code Section 8623(a) and (b) that applies to white sea bass would be continued by proposed Section 39060(a) and (b).

Existing Section 8623 also includes a disclaimer in subdivision (e) that, by its terms, applies to all provisions of that section (“Notwithstanding the provisions of this section...”)

However, despite the broad wording of this disclaimer, the Commission’s analysis suggests that the substantive portion of subdivision (e) logically applies only to subdivision (b). Proposed Section 39055(c) would state that specific application expressly.

The Commission invites comment on whether that expressly stated application would cause any problems.

CHAPTER 4. OTHER BASS

§ 39100. Giant seabass

39100. (a) Giant seabass (*Stereolepis gigas*) may not be taken for any purpose, except that not more than one fish per vessel may be possessed or sold if taken incidentally in commercial fishing operations by gill or trammel net. Any fish so taken shall not be transferred to any other vessel.

(b) The restrictions specified in this section shall not apply to 1,000 pounds of giant seabass per trip taken in waters lying south of the International Boundary Line between the United States and Mexico extended westerly into the Pacific Ocean. Fish taken under this provision, however, shall be limited to a maximum aggregate of 3,000 pounds per vessel in any calendar year. A current fishing

1 permit issued by the Mexican government constitutes valid evidence that the giant
2 seabass were taken south of the international boundary.

3 **Comment.** Section 39100 continues former Fish and Game Code Section 8380 without
4 change.

5 **§ 39105. Kelp bass, sand bass, or spotted bass**

6 39105. (a) Kelp bass, sand bass, and spotted bass, all of the genus *Paralabrax*,
7 shall not be sold or purchased, or possessed in any place where fish are purchased,
8 possessed for sale, or sold, or where food is offered or processed for sale, or in any
9 truck, vessel, or other conveyance operated by or for a place so selling or
10 possessing fish, except that those fish may be imported into this state pursuant to
11 Section 38850, 38860, 38865, or 38875, or Part 9 (commencing with Section
12 28400) of Division 7, and may be sold under regulations as the commission may
13 adopt.

14 (b) It is unlawful to take, possess, or sell any fish specified in this section that is
15 less than 10 1/2 inches in length.

16 **Comment.** Section 39105 continues former Fish and Game Code Section 8372 without
17 substantive change.

18 **PART 7. CARP**

19 **TITLE 1. CARP GENERALLY**

20 **CHAPTER 1. PRELIMINARY PROVISIONS**

21 **§ 39150. Application of title**

22 39150. The provisions of this title do not apply to activities governed by Part 1
23 (commencing with Section 23300) of Division 7.

24 **Comment.** Section 39150 continues former Fish and Game Code Section 6403 without
25 substantive change.

26 **§ 39155. Provisions not exclusive**

27 39155. The provisions of this part are not intended to be exclusive. Other
28 provisions that govern carp include, but are not limited to, the following
29 provisions:

30 (a) Section 17025.

31 (b) Section 15525.

32 (c) Section 15535.

33 (d) Section 20100.

34 (e) Section 22125.

35 **Comment.** Section 39155 is new. It is added for drafting convenience.

CHAPTER 2. GRASS CARP

§ 39200. Preexisting grass carp programs

39200. Nothing in this chapter shall be construed as restricting grass carp programs approved by the department on or before June 1, 1995.

Comment. Section 39200 continues former Fish and Game Code Section 6456 without substantive change.

§ 39205. Legislative declaration

39205. The Legislature finds and declares that triploid grass carp have the potential to control aquatic nuisance plants in non-public waters allowing for reduced chemical control but that the threat that grass carp pose to aquatic habitat may outweigh its benefits. It is the intent of this section to allow the department to use its management authority to provide for the long-term health of the ecosystem in the state, including the aquatic ecosystem, and, in that context, manage grass carp either through control of movement, eradication of populations, acquisition of habitat, and any other action that the department finds will maintain the biological diversity and the long term, overall health of the state's environment. The department shall undertake the management of grass carp in a manner that is consistent with provisions of this code, and, for the purposes of this section the department shall define management as handling, controlling, destroying, or moving species. The Legislature does not intend for this section to provide a right for the use of triploid grass carp if the department finds that use of the species poses an unacceptable risk to the state's existing ecosystem.

Comment. Section 39205 continues former Fish and Game Code Section 6440 without change.

§ 39210. Department regulations

39210. The department shall adopt regulations that provide for the control of aquatic plant pests using artificially introduced triploid grass carp under a permit issued by the department. The regulations shall do all of the following:

(a) Restrict triploid grass carp introductions to those triploid grass carp that have been rendered sterile immediately after the eggs have been fertilized.

(b) Require individual fish to be checked to ensure that a third, triploid, set of chromosomes has been retained, preventing further reproduction by that individual fish.

(c) Limit aquatic plant pest control programs using triploid grass carp to the use of sterile triploid grass carp with documented certification of triploidy to ensure sterility.

(d) Require the identification by tagging of individual fish as the property of each owner.

(e) Require the posting of notices at stocked bodies of water declaring the penalties for removing triploid grass carp.

1 (f) Limit the permits for the use of triploid grass carp in waters on golf courses
2 located in residential areas to those waters that are determined by the department
3 to be secure from the removal of triploid grass carp to unauthorized waters.

4 (g) Provide for management of the triploid grass carp populations in a manner
5 consistent with the provisions of this code where the department finds that such
6 actions will benefit the long-term health of the state's biodiversity as a whole.

7 (h) Until January 1, 1999, the regulations shall not authorize the issuance of
8 permits for the use of triploid grass carp in waters located within condominium
9 areas of any residential area for which a permit may not be issued pursuant to
10 subdivision (f), except at three locations within the area authorized pursuant to this
11 subdivision. The three locations shall be selected by the department in consultation
12 with the Imperial Irrigation District. The limitation to three locations is necessary
13 to enable monitoring of human-induced movement of triploid grass carp to
14 unauthorized waters, and to permit the evaluation of the impact of the experiment.

15 **Comment.** Section 39210 continues former Fish and Game Code Section 6450 without
16 substantive change.

17 **§ 39215. Certification by providers**

18 39215. All providers of triploid grass carp for use under this chapter shall
19 provide certification acceptable to the department of triploidy and disease-free
20 conditions for all fish introduced.

21 **Comment.** Section 39215 continues former Fish and Game Code Section 6451 without
22 substantive change.

23 **§ 39220. Information required for permit**

24 39220. Prior to receiving a permit from the department to use triploid grass carp,
25 the potential user shall provide to the department all information required by the
26 department, including, but not limited to, information relating to the following
27 matters:

28 (a) The type of waterway to be stocked.

29 (b) The absence of a connection between the site and adjacent fresh water
30 systems.

31 (c) All aquatic plant management problems, including, but not limited to,
32 problems relating to the following matters:

33 (1) The acres of aquatic plants, by species, at the peak of growing season.

34 (2) The desired vegetation quantity or coverage.

35 (3) The number and size of triploid grass carp recommended.

36 (4) All sensitive plant or animal species within the waterway to be stocked.

37 (5) Connected waterways.

38 **Comment.** Section 39220 continues former Fish and Game Code Section 6452 without
39 substantive change.

1 **§ 39225. Permit conditions**

2 39225. The department shall impose conditions in the permit to use triploid
3 grass carp under this chapter that it finds necessary to prevent escape of the
4 triploid grass carp from the targeted area. The conditions shall include, but are not
5 limited to, the following:

6 (a) No permit shall be issued for the use of triploid grass carp in waters with an
7 open fresh water connection to other waters of the state.

8 (b) Any waters in which triploid grass carp are used under this chapter shall be
9 under the control of the permittee. In addition, barriers to fish movement
10 acceptable to the department shall be in place before introduction of triploid grass
11 carp under this chapter. Movement of triploid grass carp to areas outside the
12 control of the permittee is prohibited.

13 (c) Any waters in which triploid grass carp are used under this chapter shall have
14 sufficient dissolved oxygen and suitable vegetation for consumption to sustain the
15 introduced triploid grass carp, as determined by the department.

16 (d) Except within closed basins, including the Salton Sea, no permit shall be
17 issued for the use of triploid grass carp within the 100-year flood plain.

18 (e) Any person or persons engaging in the introduction of triploid grass carp into
19 any area, or in the transfer of triploid grass carp from one site to another, without a
20 permit from the department, shall be punished by a fine of not more than five
21 thousand dollars (\$5,000), by imprisonment in a county jail for not more than one
22 year, or by both that fine and imprisonment.

23 **Comment.** Section 39225 continues former Fish and Game Code Section 6455 without
24 substantive change.

25 **§ 39230. Permit and inspection fees**

26 39230. The department shall establish permit and inspection fees sufficient to
27 recover, but not exceed, the initial and ongoing costs of the program under this
28 chapter.

29 **Comment.** Section 39230 continues former Fish and Game Code Section 6454 without
30 substantive change.

31 **§ 39235. Report by permittee**

32 39235. (a) On or before March 1 of each year following the first year after
33 triploid grass carp introduction, the permittee shall provide to the department all of
34 the information required by the department, including, but not limited to, the
35 following:

36 (1) The number and size of triploid grass carp recommended for the waterway
37 stocked.

38 (2) The number and size of triploid grass carp stocked in the waterway.

39 (3) The acres of aquatic plants, by species, at the peak of the growing season in
40 the year prior to introduction of triploid grass carp in the waterway stocked.

(4) The acres of aquatic plants, by species, at the peak of the current year growing season.

(b) The annual report shall be submitted until five years after the use of triploid grass carp to control aquatic plant pests is terminated, unless evidence acceptable to the department is provided that all triploid grass carp have been removed from the waterway.

Comment. Section 39235 continues former Fish and Game Code Section 6453 without change.

§ 39240. Consultation with Department of Food and Agriculture

39240. Because of its experience and continuing involvement with hydrilla control programs, the implementation of Sections 25910 and 25930 shall be carried out in consultation with the Department of Food and Agriculture.

Comment. Section 39240 continues former Fish and Game Code Section 6457 without substantive change.

§ 39245. Suspension of permit issuance process

39245. (a) The department may suspend the permit issuance process authorized by this chapter, if it obtains documented and verifiable evidence of escapements of triploid grass carp permitted under this chapter into unauthorized waters, the unauthorized use of grass carp, or threats to fish and wildlife and their habitats as the result of this program, and the director makes a written finding to that effect.

(b) If the situation is local, the suspension may be limited to the area whose waters, habitat, and fish and wildlife resources are threatened.

(c) The suspension shall last until the director makes a written finding that the threat has been abated.

Comment. Section 39245 continues former Fish and Game Code Section 6460 without substantive change.

TITLE 2. COMMERCIAL PROVISIONS

§ 39300. Application of title

39300. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 39300 is new. It is added for drafting convenience.

§ 39305. Use of traps

39305. Traps may be used throughout the year to take carp in any district, subject to the following restrictions:

(a) Traps shall not exceed six feet in greatest dimension.

(b) Traps shall be made of cotton or nylon twine.

(c) Meshes shall not be less than three and one-half inches in length, except that fyke and bait bags may be any size mesh.

- 1 (d) Traps shall have only a single vertical fyke opening at the top of the trap.
2 (e) Traps shall be baited only with grain or grain products.
3 (f) Fish other than carp taken in traps pursuant to this section shall be
4 immediately returned to the water.
5 **Comment.** Section 39305 continues former Fish and Game Code Section 9023 without
6 substantive change.

7 PART 8. CATFISH

8 TITLE 1. CATFISH GENERALLY [*RESERVED*]

9 TITLE 2. COMMERCIAL PROVISIONS

10 § 39400. Application of title

11 39400. For purposes of Section 37805, the provisions in this title are commercial
12 provisions.

13 **Comment.** Section 39400 is new. It is added for drafting convenience.

14 § 39405. Provisions not exclusive

15 39405. The provisions of this part are not intended to be exclusive. Other
16 provisions that govern catfish include, but are not limited to, Section 23355.

17 **Comment.** Section 39405 is new. It is added for drafting convenience.

18 § 39410. Prohibited sale

19 39410. No catfish may be sold, except catfish imported from outside the state or
20 catfish grown pursuant to Part 1 (commencing with Section 23300) of Division 7.

21 **Comment.** Section 39410 continues former Fish and Game Code Section 8435 without
22 substantive change.

23 PART 9. CROAKER

24 TITLE 1. CROAKER GENERALLY

25 § 39500. Provisions not exclusive

26 39500. The provisions of this part are not intended to be exclusive. Other
27 provisions that govern croaker include, but are not limited to, the following
28 provisions:

- 29 (a) Section 14870.
30 (b) Section 15915.
31 (c) Section 16805.
32 (d) Section 21950.

- 1 (e) Section 20710.
2 (f) **Section 10664.**
3 (g) **Section 10666.**
4 (h) **Section 10667.**
5 **Comment.** Section 39500 is new. It is added for drafting convenience.

6 TITLE 2. COMMERCIAL PROVISIONS

- 7 § **39550. Application of title**
8 39550. For purposes of Section 37805, the provisions in this title are commercial
9 provisions.
10 **Comment.** Section 39550 is new. It is added for drafting convenience.

- 11 § **39555. Yellowfin croaker, spotfin croaker, or California corbina**
12 39555. Yellowfin croaker, spotfin croaker, and California corbina shall not be
13 sold or purchased, or possessed in any place where fish are purchased, possessed
14 for sale, or sold, or where food is offered for sale, or in any truck or other
15 conveyance operated by or for a place selling or possessing fish.
16 **Comment.** Section 39555 continues former Fish and Game Code Section 8373 without
17 substantive change.

18 PART 10. GRUNION

19 TITLE 1. GRUNION GENERALLY

- 20 § **39600. Provisions not exclusive**
21 39600. The provisions of this part are not intended to be exclusive. Other
22 provisions that govern grunion include, but are not limited to Section 20710.
23 **Comment.** Section 39600 is new. It is added for drafting convenience.

24 TITLE 2. COMMERCIAL PROVISIONS

- 25 § **39650. Application of title**
26 39650. For purposes of Section 37805, the provisions in this title are commercial
27 provisions.
28 **Comment.** Section 39650 is new. It is added for drafting convenience.
- 29 § **39655. Season**
30 39655. It is unlawful to take grunion (*Leuresthes tenuis*) between March 31 and
31 June 1.
32 **Comment.** Section 39655 continues former Fish and Game Code Section 8381 without
33 substantive change.

PART 11. HAGFISH

TITLE 1. HAGFISH GENERALLY

§ 39700. Provisions not exclusive

39700. The provisions of this part are not intended to be exclusive. Other provisions that govern hagfish include, but are not limited to the following provisions:

(a) Section 19230.

(b) Section 19500.

Comment. Section 39700 is new. It is added for drafting convenience.

TITLE 2. COMMERCIAL PROVISIONS

§ 39750. Application of title

39750. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 39750 is new. It is added for drafting convenience.

§ 39755. Take

39755. Hagfish may be taken under a general trap permit, if all of the following criteria are met:

(a) Korean traps and bucket traps may be used to take only hagfish under this article.

(b) No more than a total of 500 Korean traps or a total of 200 bucket traps may be possessed aboard a vessel or in the water or combination thereof.

(c) No permittee may possess both Korean traps or bucket traps and other types of traps aboard a vessel at the same time. When Korean traps or bucket traps are being used or possessed aboard a vessel, no species of finfish other than hagfish shall be taken, possessed aboard, or sold for commercial purposes.

(d) Popups shall not be used on buoy lines attached to Korean traps or bucket traps, and shall not be possessed by a commercial fisherman aboard a vessel when taking hagfish.

Comment. Section 39755 continues former Fish and Game Code Section 9001.6 without change.

PART 12. HALIBUT

TITLE 1. HALIBUT GENERALLY

§ 39800. Provisions not exclusive

39800. The provisions of this part are not intended to be exclusive. Other provisions that govern halibut include, but are not limited to the following provisions:

- (a) Section 13900.
- (b) Section 16805.
- (c) Section 16110.
- (d) Section 18505.
- (e) Section 18510.
- (f) Section 18800.
- (g) Section 18805.
- (h) Section 18810.
- (i) Section 18815.
- (j) Section 18820.
- (k) Section 18825.
- (l) Section 21950.
- (m) Section 25125.
- (n) Section 50520.
- (o) **Section 10664.**
- (p) **Section 10666.**
- (q) **Section 10667.**

Comment. Section 26450 is new. It is added for drafting convenience.

§ 39805. Conformity with other law

39805. The commission may prohibit the taking or possessing of Pacific halibut (Hippoglossus) in the same manner as the taking or possessing of Pacific halibut is prohibited by federal law or by rules or regulations adopted by the International Pacific Halibut Commission, notwithstanding any other provision of this code.

Comment. Section 26455 continues former Fish and Game Code Section 316 without change.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 39850. Application of title

39850. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 39850 is new. It is added for drafting convenience.

1 CHAPTER 2. TAKE, POSSESSION, OR SALE

2 Article 1. General Provisions

3 § 39900. Season

4 39900. California halibut (*Paralichthys californicus*) may be taken at any time.

5 **Comment.** Section 39900 continues former Fish and Game Code Section 8391 without
6 change.

7 § 39905. Size restrictions

8 39905. (a) No California halibut may be taken, possessed, or sold that measures
9 less than 22 inches in total length.

10 (b) For purposes of subdivision (a), total length means the shortest distance
11 between the tip of the jaw or snout, whichever extends farthest while the mouth is
12 closed, and the tip of the longest lobe of the tail, measured while the halibut is
13 lying flat in natural repose, without resort to any force other than the swinging or
14 fanning of the tail.

15 **Comment.** Section 39905 continues former Fish and Game Code Section 8392 without
16 substantive change.

17 Article 2. Halibut Bottom Trawl Permit

18 § 39950. Permit requirement

19 39950. Any vessel using bottom trawl gear in state-managed halibut fisheries, as
20 described in subdivision (a) of Section 16110, shall possess a valid California
21 halibut bottom trawl permit that has not been suspended or revoked and that is
22 issued by the department authorizing the use of trawl gear by that vessel for the
23 take of California halibut.

24 **Comment.** Section 39950 continues former Fish and Game Code Section 8494(a) without
25 substantive change.

26 § 39955. Eligibility

27 39955. (a) A California halibut bottom trawl vessel permit shall be issued
28 annually. In order to be eligible for that permit, an applicant shall have been issued
29 a California halibut bottom trawl vessel permit in the immediately preceding
30 permit year.

31 (b) The department shall not issue a California halibut bottom trawl vessel
32 permit pursuant to this section for use in the California halibut fishery unless that
33 vessel has landed a minimum of 200 pounds of California halibut and reported that
34 landing on fish landing receipts as being caught with bottom trawl gear in at least
35 one of the following:

36 (1) At least two of the calendar years 1995 to 2003, inclusive.

(2) At least one of the calendar years 1995 to 2003, inclusive, and from January 1, 2004, to February 19, 2004, inclusive.

Comment. Subdivision (a) of Section 39955 continues former Fish and Game Code Section 8494(b) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8494(c) without change.

§ 39960. Transfer of permit

39960. Permits issued pursuant to this section may be transferred only if at least one of the following occur:

(a) The commission adopts a restricted access program for the fishery that is consistent with the commission's policies regarding restricted access to commercial fisheries.

(b) Prior to the implementation of a restricted access program, the permit is transferred to another vessel owned by the same permitholder of equal or less capacity, as determined by the department, and if the originally permitted vessel was lost, stolen, destroyed, or suffered a major irreparable mechanical breakdown. The department may not issue a permit for a replacement vessel if the department determines that the originally permitted vessel was fraudulently reported as lost, stolen, destroyed, or damaged. Only the permitholder at the time of the loss, theft, destruction, or irreparable mechanical breakdown of a vessel may apply to transfer the vessel permit. Evidence that a vessel is lost, stolen, or destroyed shall be in the form of a copy of the report filed with the United States Coast Guard, or any other law enforcement agency or fire department that conducted an investigation of the loss.

(c) Prior to the implementation of a halibut trawl restricted access program, the commission may consider requests from a vessel permitholder or his or her conservator or estate representative to transfer a permit with the vessel if both of the following conditions are met:

(1) The permitholder has died, is permanently disabled, or the permitholder is at least 65 years of age and has decided to retire from commercial fishing.

(2) California halibut landings contributed significantly to the record and economic income derived from the vessel, as determined by regulations adopted by the commission. The commission may request information that it determines is reasonably necessary from the permitholder or his or her heirs or estate for the purpose of verifying statements in the request prior to authorizing the transfer of the permit.

Comment. Section 39960 continues former Fish and Game Code Section 8494(d) without change.

§ 39965. Permit fees

39965. The commission shall establish California halibut bottom trawl vessel permit fees based on the recommendations of the department and utilizing the guidelines outlined in subdivision (b) of Section 3465 to cover the costs of

1 administering this section. Prior to the adoption of a restricted access program
2 pursuant to Section 39960, fees may not exceed one thousand dollars (\$1,000) per
3 permit.

4 **Comment.** Section 39965 continues former Fish and Game Code Section 8494(e) without
5 substantive change.

6 **§ 39970. Application of federal permit**

7 39970. Individuals holding a federal groundfish trawl permit may retain and
8 land up to 150 pounds of California halibut per trip without a California halibut
9 trawl permit in accordance with federal and state regulations, including, but not
10 limited to, regulations developed under a halibut fishery management plan.

11 **Comment.** Section 39970 continues former Fish and Game Code Section 8494(f) without
12 substantive change.

13 **§ 39975. Commission regulation**

14 39975. The commission may adopt regulations to implement this chapter.

15 **Comment.** Section 39975 continues former Fish and Game Code Section 8494(h) without
16 substantive change.

17 **§ 39980. Inoperative date of article**

18 39980. This article shall become inoperative upon the adoption by the
19 commission of a halibut fishery management plan in accordance with the
20 requirements of Title 3 (commencing with Section 12100) of Part 4 of Division 6.

21 **Comment.** Section 39980 continues former Fish and Game Code Section 8494(g) without
22 substantive change.

23 **Note.** The Commission invites comment on whether existing Fish and Game Code
24 Section 8494 (which would be continued by the sections of this article) should be
25 discontinued as obsolete based on satisfaction of the condition described in Section 8494(g)
26 (which would be continued by proposed Section 39980).

27 Article 3. License Revocation

28 **§ 40050. Revocation or suspension of license**

29 40050. (a) In addition to any other applicable penalty, the commercial fishing
30 license of the master of a vessel may be revoked or suspended by the commission,
31 when requested by the department, for a period not to exceed one year, upon the
32 second conviction in three years of the master or the master's agent, servant,
33 employee, or any other person acting under the master's direction or control, for a
34 violation of any provision of this chapter.

35 (b) A master's license shall not be revoked unless both the first and second
36 convictions are for a violation by the master or a violation occurring when the
37 person convicted was acting as the master's agent, servant, employee, or acting
38 under the master's direction or control.

Comment. Section 40050 continues the part of former Fish and Game Code Section 12002.8(d) and (e) applicable to the provisions of this chapter, without substantive change.

Note. Existing Fish and Game Code Section 12002.8(d) (which would be continued by proposed Section 40050(a)) applies to a violation of any of several articles of Chapter 2 of Part 3 of Division 6 of the existing code, including what is identified as “Article 13 (commencing with Section 8495).”

Three years after the last amendment of Section 12002.8, a new Section 8494 was inserted at the beginning of that Article 13, rendering Section 12002.8(d)’s description of the article technically inaccurate.

The Commission’s analysis suggests that the inaccuracy represents only a drafting omission, rather an affirmative intention to exclude Section 8494 from the application of Section 12002.8(d). Proposed Section 26700 is therefore drafted to apply to the proposed continuation of Section 8494 (which is divided into multiple proposed sections in the chapter containing Section 40050).

The Commission invites comment on whether that scope of application would cause any problems.

Article 4. Halibut Trawl Grounds

§ 40100. California halibut trawl grounds

40100. The ocean waters lying between one and three nautical miles from the mainland shore lying south and east of a line running due west (270° true) from Point Arguello and north and west of a line running due south (180° true) from Point Mugu is hereby designated as the California halibut trawl grounds.

Comment. Section 40100 continues former Fish and Game Code Section 8495(a) without change.

§ 40105. Areas where trawling prohibited

40105. (a) The use of trawl gear for the take of fish is prohibited in the following areas of the California halibut trawl grounds:

(1) Around Point Arguello. The area from a line extending from Point Arguello true west (270°) and out three miles, to a line extending from Rocky Point true south (180°) and out three miles.

(2) Around Point Conception. From a point on land approximately one-half mile north of Point Conception at latitude 34° 27.5′ extending seaward true west (270°) from one to three miles, to a point on land approximately 1/2 mile east of Point Conception at longitude 120° 27.5′ extending seaward true south (180°) from one to three miles.

(3) In the Hueneme Canyon in that portion demarked by the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 and from one mile to the three mile limit of state waters.

(4) In Mugu Canyon, from Laguna Point, a line extending true south (180°) and out three miles, to Point Mugu, a line extending true south (180°) and from one to three miles.

(b) The following areas in the California halibut trawl grounds shall be closed to trawling, unless the commission finds that a bottom trawl fishery for halibut minimizes bycatch, is likely not damaging sea floor habitat, is not adversely affecting ecosystem health, and is not impeding reasonable restoration of kelp, coral, or other biogenic habitats:

(1) The ocean waters lying between one and three nautical miles from the mainland shore from a point east of a line extending seaward true south (180°) from a point on land approximately 1/2 mile east of Point Conception at longitude 120° 27.5' to a line extending due south from Gaviota.

(2) The ocean waters lying between one and two nautical miles from the mainland shore lying east of a line extending due south from Santa Barbara Point (180°) and west of a line extending due south from Pitas Point (180°).

(3) Except as provided in subdivision (b), the ocean waters lying between one and three nautical miles from the mainland shore lying south and east of a line running due west (270° true) from Point Arguello to a line extending seaward true south (180°) from a point on land approximately 1/2 mile east of Point Conception at longitude 120° 27.5', and from the western border of the IMO Vessel Traffic safety zone on NOAA/NOS Chart 18725 in Hueneme Canyon running south and east to a line running due south (180° true) from Point Mugu.

(c) In making the finding described in subdivision (b), the commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts.

(c) Commencing January 1, 2008, the commission shall review information every three years from the federal groundfish observer program and other available research and monitoring information it determines relevant, and shall close any areas in the California halibut trawl grounds where it finds that the use of trawl gear does not minimize bycatch, is likely damaging sea floor habitat, is adversely affecting ecosystem health, or impedes reasonable restoration of kelp, coral, or other biogenic habitats. The commission shall pay special attention to areas where kelp and other biogenic habitats existed and where restoring those habitats is reasonably feasible, and to hard bottom areas and other substrate that may be particularly sensitive to bottom trawl impacts in making that finding.

Comment. Section 40105 continues former Fish and Game Code Section 8495(b)-(d) without substantive change.

§ 40110. Commission determination of gear specifications

40110. Notwithstanding any other provision of law, the commission shall determine the size, weight, and configuration of all parts of the trawl gear, including, but not limited to, net, mesh, doors, appurtenances, and towing equipment as it determines is necessary to ensure trawl gear is used in a sustainable manner within the California halibut trawl grounds.

Comment. Section 40110 continues former Fish and Game Code Section 8495(e) without

substantive change.

§ 40115. Other requirements

40115. Within the California halibut trawl grounds designated in Section 40100, the use of trawl nets are subject to the following requirements:

(a) Open season for the take of California halibut shall be from June 16 to March 14, inclusive.

(b) California halibut shall only be taken pursuant to Section 39905.

(c) Not more than 500 pounds of fish other than California halibut may be possessed, except that any amount of sea cucumbers may be possessed by a person who holds a valid sea cucumber permit and who meets any conditions adopted by the commission pursuant to Section 50520, and any amount of sharks, skates, or rays for which the take or possession of that species is not otherwise prohibited by this code may be taken or possessed.

(d) It is unlawful to operate a trawl net in a way that damages or destroys other types of fishing gear that is buoyed or otherwise visibly marked.

(e) Sections 16250, 16270, 16275, 16280, 16285, 16290, 16295, 16300, 16305 and 16310 do not apply to trawl nets when used or possessed on California halibut trawl grounds.

(f) Trawl nets described in Section 16355 shall only be used within the halibut trawl grounds.

(g) Single bags and cod-ends or double bags and cod-ends may be used within the halibut trawl grounds and may be possessed while a vessel is in transit directly to the halibut trawl grounds or returning directly to port. Double bags shall be hung and tied to each rib line so that the knots of each layer coincide, knot for knot, for the full length of the double layers. The double mesh section shall not measure over 25 meshes or 12 feet in length, whichever is greater. The individual meshes in the double section shall measure not less than 7 1/2 inches in length.

(h) No net with cod-end meshes less than prescribed in this section may be possessed on any vessel that is operating under the authority of this section.

Comment. Section 40115 continues former Fish and Game Code Section 8496 without substantive change.

Note. Existing Fish and Game Code Section 8496 (which would be continued by proposed Section 40115) contains several requirements for trawling for California halibut within specified halibut trawling grounds, including subdivision (f), which reads as follows:

“Trawl nets described in Section 8843 shall only be used within the halibut trawl grounds.”

However, existing Section 8843 describes a trawl net whose use is *prohibited* in a geographic area that appears to overlap the specified halibut trawl grounds:

“8843. It is unlawful to use any trawl net with cod-end mesh less than 7 1/2 inches in length and with a cod end less than 29 meshes long and a circumference of not less than 47 meshes in waters lying between one and three nautical miles from the mainland shore between a line running due west (270° true) from Point Arguello and a line running due south (180° true) from Point Mugu.”

1 The intended meaning of existing Section 8496(f) is therefore unclear. Is this provision meant
2 to provide an exception to the prohibition in Section 8843, for trawl nets used in the halibut trawl
3 grounds? Or is it meant to provide that only trawl nets that are not described in Section 8843 may
4 be used in the halibut trawl grounds?

5 **The Commission invites comment on the intended meaning of existing Section 8496(f).**

6 **§ 40120. Season for take**

7 40120. (a) If the director determines that the California halibut resource, or
8 existing fishing operations, within the California halibut trawl grounds designated
9 in Section 40100, are in danger of irreparable injury, the director may order the
10 closure of part or all of the area to trawl net fishing, or may further restrict the nets
11 that may be used in part or all of the area. Any closure or restriction order shall be
12 adopted by emergency regulation, in accordance with Chapter 3.5 (commencing
13 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

14 (b) The department shall bring any regulation adopted pursuant to this section to
15 the attention of the Legislature within 30 calendar days after commencement of
16 the next succeeding regular session of the Legislature.

17 **Comment.** Section 40120 continues former Fish and Game Code Section 8497 without
18 substantive change.

19 **§ 40125. Incidental take or possession of halibut**

20 40125. When fishing for shrimp or prawns under a permit issued pursuant to
21 Section 51100, no Pacific halibut and not more than 150 pounds of California
22 halibut shall be possessed or landed.

23 **Comment.** Section 40125 continues the second sentence of former Fish and Game Code
24 Section 8842(c) without substantive change.

25 **PART 13. HERRING**

26 **TITLE 1. HERRING GENERALLY**

27 **§ 40250. Provisions not exclusive**

28 40250. The provisions of this part are not intended to be exclusive. Other
29 provisions that govern herring include, but are not limited to, the following
30 provisions:

31 (a) Section 12165.

32 (b) Section 18065.

33 (c) Section 21210.

34 (d) Section 21360.

35 (e) Section 22505.

36 (f) Section 22515.

37 (g) Section 40500.

38 (h) Section 40505.

(i) Section 40510.

(j) Section 40515.

(k) **Section 10660.**

Comment. Section 40250 is new. It is added for drafting convenience.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 40300. Application of title

40300. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 40300 is new. It is added for drafting convenience.

CHAPTER 2. PERMIT

§ 40350. Permit required for take

40350. (a) Herring may be taken for a commercial purpose only under a permit, subject to regulations adopted by the commission.

(b) It is unlawful to take herring for roe on a vessel unless the operator holds a herring permit issued by the department pursuant to commission regulations.

Comment. Subdivision (a) of Section 40350 continues the first sentence of former Fish and Game Code Section 8550 without substantive change.

Subdivision (b) continues the first sentence of former Fish and Game Code Section 8552(a) without substantive change.

§ 40355. Limit on number of permits issued

40355. The commission may, whenever necessary to prevent overutilization, to ensure efficient and economic operation of the fishery, or to otherwise carry out this chapter, limit the total number of permits that are issued and the amount of herring that may be taken under the permits. In limiting the total number of permits, the commission shall take into consideration any restriction of the fishing area and the safety of others who, for purposes other than fishing, use the waters from which herring are taken.

Comment. Section 40355 continues the second and third sentences of former Fish and Game Code Section 8550 without substantive change.

§ 40360. Fee for permit

40360. (a) A herring net permit granting the privilege to take herring with nets for commercial purposes shall be issued to licensed commercial fishermen, subject to regulations adopted pursuant to Sections 40350 and 40355, as follows:

(1) To any resident of this state to use gill nets, upon payment of a fee of two hundred sixty-five dollars (\$265).

1 (2) To any nonresident to use gill nets, upon payment of a fee of one thousand
2 dollars (\$1,000).

3 (b) The commission shall not require a permit for a person to be a crewmember
4 on a vessel taking herring pursuant to this chapter.

5 **Comment.** Section 40360 continues former Fish and Game Code Section 8550.5 without
6 substantive change.

7 **§ 40365. Permit requirements**

8 40365. (a) No person may be issued more than one herring permit, and the
9 department shall not issue a herring permit to more than one person except as
10 provided in Section 40375.

11 (b) Herring permits shall only be issued to and shall be held only by a natural
12 person.

13 (c) Herring permits shall not be used as any form of security for any purpose,
14 including, but not limited to, financial or performance obligations.

15 (d) The permittee shall be on board the vessel at all times during herring fishing
16 operations, subject only to exceptions provided for in this code and regulations
17 adopted pursuant to this code.

18 **Comment.** Section 40365 continues former Fish and Game Code Section 8552(b)-(e) without
19 substantive change.

20 **§ 40370. Herring fishery experience points**

21 40370. (a) For purposes of this chapter, the experience points for a person
22 engaged in the herring roe fishery shall be based on the number of years holding a
23 commercial fishing license and the number of years having served as a
24 crewmember in the herring roe fishery, and determined by the sum of both of the
25 following:

26 (1) One point for each year in the previous 12 years (prior to the current license
27 year) that the person has held a commercial fishing license issued pursuant to
28 Section 14550, not to exceed a maximum of 10 points.

29 (2) Five points for one year of service as a paid crewmember in the herring roe
30 fishery, as determined pursuant to Section 40440, three points for a second year of
31 service as a paid crewmember, and two points for a third year as a paid
32 crewmember, beginning with the 1978–79 herring fishing season, not to exceed a
33 maximum of 10 points.

34 (b) The department shall maintain a list of all individuals possessing 20
35 experience points, and additional lists of all those persons holding two points or
36 more, grouped by number of points. The list shall be maintained annually and
37 shall be available from the department to all pointholders and to all herring
38 permittees. All pointholders are responsible for providing the department with
39 their current address and for verifying points credited to them by the department.

40 (c) A herring permittee may use the department's list and rely upon that list in
41 making offers for transfer of his or her permit until the date of the annual

1 distribution of the new list. On and after the date of the annual revision of the list,
2 the permittee shall use the new list.

3 (d) The point provisions in this section are for purposes of sale of a permit, or
4 transfer to a partner of a co-owned permit.

5 **Comment.** Section 40370 continues former Fish and Game Code Section 8552.8 without
6 substantive change.

7 **§ 40375. Issuance of single permit to two individuals**

8 40375. (a) Notwithstanding Section 40365, a herring permit may be issued to
9 two individuals if one of the following criteria is met:

10 (1) The individuals are married to each other, or are registered domestic
11 partners, and file with the department a certified copy of their certificate of
12 marriage or registered domestic partner certificate, and a declaration under penalty
13 of perjury, or a court order, stating that the permit is community property.

14 (2) The individuals meet both of the following requirements:

15 (A) They are both engaged in the herring roe fishery, either by fishing aboard
16 the vessel, or by personally participating in the management, administration, and
17 operation of the partnership's herring fishing business.

18 (B) The individuals are partners in a partnership, in which each holds 50 percent
19 ownership in a herring fishery operation, including a vessel or equipment, and that
20 partnership is demonstrated by any two of the following:

21 (i) A copy of a federal partnership tax return.

22 (ii) A written partnership agreement.

23 (iii) Joint ownership of a fishing vessel used in the herring fishery as
24 demonstrated on federal vessel license documents.

25 (b) For purposes of this section, a herring permit does not constitute a herring
26 fishing operation.

27 (c) A herring permit may be transferred to one of the partners, to be held
28 thereafter in that partner's name, only if that partner has not less than 10 herring
29 fishery experience points computed pursuant to paragraph (2) of subdivision (a) of
30 Section 40370 and there has been a death or retirement of the other partner, a
31 dissolution of partnership, or the partnership is dissolved by a dissolution of
32 marriage or registered domestic partnership, or a decree of legal separation.

33 (d) A transfer under this section shall be authorized only if proof that the
34 partnership has existed for three or more consecutive years is furnished to the
35 department, or a certified copy of a certificate of marriage or registered domestic
36 partnership is on file with the department, and the permit is community property as
37 provided in subdivision (a).

38 (e) The transferor of a permit shall not, by reason of the transfer, become
39 ineligible to participate further in the herring fishery or to purchase another permit.

40 (f) Notwithstanding subdivision (b), in the event of the death of one of the
41 partners holding a herring permit pursuant to this section, where the partnership
42 existed for longer than six months but less than three years, and the surviving

partner does not have the minimum points pursuant to subdivision (c) to qualify for a permit transfer, the permit may be transferred on an interim basis for a period of not more than 10 years to the surviving partner, if an application is submitted to the department within one year of the deceased partner's death and the surviving partner participates in the fishery for the purpose of achieving the minimum number of herring fishery experience points to be eligible for a permit transfer pursuant to Section 40380. The interim permit shall enable the surviving partner to participate in the herring fishery. At the end of the interim permit period, the surviving partner, upon application to the department, may be issued the permit if he or she has participated in the fishery and gained the minimum number of herring fishery experience points for a permit.

Comment. Section 40375 combines and continues the second sentence of former Fish and Game Code Section 8552(a), and former Fish and Game Code Section 8552.6, without substantive change. See Family Code Section 297.5(a) (registered domestic partners have same rights, protections, and benefits under law as are granted to spouses).

§ 40380. Transfer of permit generally

40380. Notwithstanding Section 3050, a herring permit may be transferred from a herring permittee to a nonpermittee who has 20 or more herring fishery experience points, if the following conditions are satisfied:

(a) The permittee shall mail, by certified or registered mail, to the department and to every individual listed on the department's list of herring fishery participants with maximum 20 or more herring fishery experience points, a notice of intention to transfer the permittee's herring permit, which shall provide all of the following information:

(1) The gear type to be used under the herring permit.

(2) The name, address, and telephone number of the permittee and proposed transferee.

(3) The amount of consideration, if any, sought by the transferor.

(b) Sixty days after mailing the notice, the transferor may transfer the permit to any person having 20 or more herring fishery experience points without any further notice, if the transfer occurs within six months of the date the original notice was given. Transfers after that six-month period shall require another 60-day notice of intention to be given.

(c) A true copy of the notice of intention to transfer a permit shall be filed with the department by the transferor under penalty of perjury and shall be available for public review.

(d) No person may hold more than one herring permit.

Comment. Section 40380 combines and continues the second sentence of former Fish and Game Code Section 8552(a), and former Fish and Game Code Section 8552.2, without substantive change.

Note. Existing Fish and Game Code Section 8552.8 (which would be continued by proposed Section 40370) appears to indicate that the maximum number of herring fishery experience points

that may be awarded is 20. However, existing Section 8552.2 (which would be continued by proposed Section 40380) refers several times to persons having 20 “or more” experience points.

The Commission invites comment that would clarify this issue.

§ 40385. Regulations relating to transfer of permits

40385. The commission may, in consultation with representatives of the commercial herring roe fishery, and after holding at least one public hearing, adopt regulations intended to facilitate the transfer of herring permits, including, but not limited to, regulations that would do the following:

(a) Allow an individual to own a single permit for each of the different herring gillnet platoons in San Francisco Bay.

(b) Eliminate the herring fishery experience point system for qualifying for a herring permit.

(c) Allow a herring permit to be passed from a parent to child, or between spouses.

Comment. Section 40385 continues former Fish and Game Code Section 8552.3 without substantive change.

§ 40390. Transfer fee

40390. (a) The department shall reissue a herring permit which has been transferred pursuant to Section 40375 or 40380 upon payment of a transfer fee of five thousand dollars (\$5,000) by the transferee of the permit.

(b) Transfer fees shall be deposited in the Fish and Game Preservation Fund, and shall be expended for research and management activities to maintain and enhance herring resources pursuant to subdivision (a) of Section 21360.

Comment. Section 40390 continues former Fish and Game Code Section 8552.7 without substantive change.

§ 40395. Drawing for expired permits

40395. Herring permits that are revoked or not renewed may be offered by the department to persons having 20 or more herring fishery experience points, in a drawing held on the first Friday of August of each year.

Comment. Section 40395 continues former Fish and Game Code Section 8552.4 without substantive change.

Note. Existing Fish and Game Code Section 8552.8 (which would be continued by proposed Section 40370) appears to indicate that the maximum number of herring fishery experience points that may be awarded is 20. However, existing Sections 8552.4 (which would be continued by proposed Section 40395) refers to persons having “20 or more” experience points.

The Commission invites comment that would clarify this issue.

§ 40400. Adjustment of fees

40400. The commission, in consultation with the department and representatives of the commercial roe herring fishery, and after holding at least one public hearing, may adjust any fee related to a herring permit, including the fee for the

1 issuance of or transfer of a herring permit, to a level that will not discourage the
2 transfer of permits or limit entry into the fishery, and that will ensure sufficient
3 funds to cover reasonable department costs associated with the management of the
4 fishery, including research and enforcement costs.

5 **Comment.** Section 40400 continues former Fish and Game Code Section 8552.1 without
6 substantive change.

7 **§ 40405. Temporary substitution of crewmember**

8 40405. The commission, in adopting regulations for the commercial herring
9 fishery, shall adopt one or more regulations providing that if a permittee is ill or
10 injured, a crewmember aboard the vessel operated by the permittee may be
11 temporarily substituted as the permittee. The commission may require that proof
12 of the illness or injury be substantiated to the satisfaction of the department.

13 **Comment.** Section 40405 continues former Fish and Game Code Section 8554 without
14 substantive change.

15 **§ 40410. Periodic review of regulations and policies**

16 40410. The director shall periodically meet and confer with representatives of
17 the commercial herring roe fishery to review regulations and policies of the
18 commission and the department concerning that fishery, and to receive
19 recommendations on the regulation and management of that fishery. In particular,
20 those representatives and their legal counsel may recommend to the department,
21 for recommendation to the commission for adoption by the commission as
22 regulations, requirements for the payment of civil damages that may be imposed in
23 lieu of revoking or suspending a permit issued pursuant to this chapter, or for
24 violations of regulations adopted by the commission pertaining to the herring roe
25 fishery.

26 **Comment.** Section 40410 continues former Fish and Game Code Section 8555 without
27 substantive change.

28 **§ 40415. Regulation relating to use of gill nets**

29 40415. Notwithstanding any other provision of law, the commission shall
30 determine, by regulation, if drift or set gill nets may be used to take herring for a
31 commercial purpose. The commission may also determine, by regulation, the size
32 of the meshes of the material used to make those gill nets.

33 **Comment.** Section 40415 continues former Fish and Game Code Section 8556 without
34 substantive change.

35 **§ 40420. Determination relating to use of round haul nets in Districts 2600 and 2605**

36 40420. Notwithstanding any other provision of law, the commission shall
37 determine, by regulation, if round haul nets may be used to take herring in
38 Districts 2600 and 2605, and the conditions under which those nets may be used.

39 **Comment.** Section 40420 continues former Fish and Game Code Section 8557 without
40 substantive change.

Note. Existing Fish and Game Code Section 8557 (which would be continued by proposed Section 40420), in contrast with preceding Section 8556 (which would be continued by proposed Section 26915), requires the Fish and Game Commission to “determine” whether round haul nets may be used to take herring in specified districts, but does not require that determination to be made “by regulation.” The Commission believes the omission from Section 8557 was inadvertent, and proposed Section 40420 would conform the language of the two sections by expressing referencing a determination “by regulation.”

The Commission invites comment on that revision.

§ 40425. Herring research and management account

40425. (a) There is established within the Fish and Game Preservation Fund a herring research and management account.

(b) The funds in the account shall be expended for the purpose of supporting, in consultation with the herring industry pursuant to Section 40410, department evaluations of and research on herring populations in San Francisco Bay, evaluations and research that may be required for Tomales Bay, Humboldt Bay, and Crescent City, and for assisting in enforcement of herring regulations.

(c) The evaluations and research shall be for the following purposes:

(1) Determining the annual herring spawning biomass.

(2) Determining the condition of the herring resource, which may include its habitat.

(3) Assisting the commission and the department in the adoption of regulations to ensure a sustainable herring roe fishery.

(d) An amount, not to exceed 15 percent of the total funds in the account, may be used for educational purposes regarding herring, herring habitat, and the herring roe fishery.

(e) The funds in the account shall consist of the funds deposited pursuant to Section 40435, and the funds derived from herring landing taxes allocated pursuant to subdivision (a) of Section 21360.

(f) The department shall maintain internal accountability necessary to ensure that all restrictions on the expenditure of the funds in the account are met.

Comment. Section 40425 continues former Fish and Game Code Section 8558 without substantive change.

§ 40430. San Francisco Bay herring stamp

40430. (a) No person shall purchase or renew any permit to take herring for a commercial purpose in San Francisco Bay, without first obtaining an annual herring stamp from the department.

(b) The fee for the annual herring stamp shall be one hundred dollars (\$100).

Comment. Section 40430 continues the first two sentences of former Fish and Game Code Section 8558.1(a) without substantive change.

§ 40435. Funds to be deposited in herring research and management account

40435. The following funds shall be deposited into the herring research and management account established pursuant to Section 40425:

1 (a) The amount of the difference between fees for nonresident and resident
2 herring net permits, collected pursuant to Section 40360.

3 (b) Fees for San Francisco Bay herring permit transfers, collected pursuant to
4 Section 40390.

5 (c) Fees for San Francisco Bay herring stamps, collected pursuant to Section
6 40425.

7 (d) One-half of all royalties collected by the department from the roe-on-kelp
8 fishery, pursuant to paragraph (2) of subdivision (f) of Section 164 of Title 14 of
9 the California Code of Regulations.

10 **Comment.** Subdivisions (a) and (b) of Section 40435 continue former Fish and Game Code
11 Section 8558.2 without substantive change.

12 Subdivision (c) continues the third sentence of former Fish and Game Code Section 8558.1(a)
13 without substantive change.

14 Subdivision (d) continues former Fish and Game Code Section 8558.3 without substantive
15 change.

16 **§ 40440. Proof of crewmember experience**

17 40440. The commission, in determining experience requirements for new
18 entrants into the herring fishery after January 1, 1987, shall require that any person
19 seeking a permit to operate a vessel to take herring and claiming crew experience
20 demonstrate, to the satisfaction of the department, proof of payment as a
21 crewmember in the herring fishery, based on tax records, or copies of canceled
22 checks offered and accepted as payment for service on a crew in the California
23 herring roe fishery.

24 **Comment.** Section 40440 continues former Fish and Game Code Section 8559 without
25 substantive change.

26 **§ 40445. Revocation for failure to report or file**

27 40445. The commission shall revoke the herring permit of a permittee convicted
28 of any of the following violations:

29 (a) Failing to report herring landings.

30 (b) Underreporting herring landings.

31 (c) Failing to correctly file with the department the offer or the acceptance for a
32 permit transferred pursuant to Section 40380.

33 **Comment.** Section 40445 continues former Fish and Game Code Section 8552.5 without
34 substantive change.

35 **§ 40450. Revocation or suspension of license**

36 40450. (a) In addition to any other applicable penalty, the commercial fishing
37 license of the master of a vessel may be revoked or suspended by the commission,
38 when requested by the department, for a period not to exceed one year, upon the
39 second conviction in three years of the master or the master's agent, servant,
40 employee, or any other person acting under the master's direction or control, for a
41 violation of any provision of this chapter.

(b) A master's license shall not be revoked unless both the first and second convictions are for a violation by the master or a violation occurring when the person convicted was acting as the master's agent, servant, employee, or acting under the master's direction or control.

Comment. Section 40450 continues the part of former Fish and Game Code Section 12002.8(d) and (e) applicable to the provisions of this chapter, without substantive change.

§ 40455. Commission regulation

40455. The commission may make and enforce regulations necessary or convenient for carrying out any power, authority, or jurisdiction conferred under this chapter.

Comment. Section 40455 continues former Fish and Game Code Section 8553 without substantive change.

CHAPTER 3. TAKE OF HERRING EGGS

§ 40500. Permit to take herring eggs

40500. Herring eggs may only be taken for a commercial purpose under a revocable, nontransferable permit subject to regulations that the commission shall adopt.

Comment. Section 40500 continues the first sentence of former Fish and Game Code Section 8389(a) without substantive change.

§ 40505. Payment of royalty

40505. In addition to the license fees provided for in this code, every person taking herring eggs shall pay a royalty, as the commission may prescribe, of not less than fifty dollars (\$50) per ton of herring eggs taken.

Comment. Section 40505 continues the second sentence of former Fish and Game Code Section 8389(a) without substantive change.

§ 40510. Permit limitations

40510. (a) Whenever necessary to prevent overutilization, to ensure efficient and economic operation of the fishery, or to otherwise carry out this chapter, the commission may limit the number of permits that are issued, and the amount of herring eggs taken under those permits.

(b) In limiting the number of permits, the commission shall take into consideration any restriction of the fishing area, and the safety of others who, for purposes other than fishing, use the waters from which herring eggs are taken.

Comment. Subdivision (a) of Section 40510 continues former Fish and Game Code Section 8389(b) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8389(c) without substantive change.

Note. Existing Fish and Game Code Section 8389(b) (which would be continued by proposed Section 40510(a)) provides that the Fish and Game Commission may place limits on herring egg

permits, among other reasons, in order to “carry out this article.” However, the article in which Section 8389 appears, Article 9 (commencing with Section 8370) of Chapter 2 of Part 3 of Division 6 of the existing code, contains provisions governing the take of many different saltwater and anadromous fish, and Section 8389 is the only provision in that article relating to herring eggs.

Proposed Section 40510(a), in continuing Section 8389(b), would replace the reference to “this article” with a reference to only the provisions in the proposed law that continue existing Section 8389. Because Section 8389 would be divided into the four sections in a chapter of the proposed law continuing Section 8389(b), the reference has been changed to “this chapter.”

The Commission invites comment on the appropriateness of that revision.

§ 40515. Exception for incidental take of aquatic plants

40515. Every person operating under a permit issued pursuant to Section 40500 is excepted from the provisions of **Chapter 6 (commencing with Section 6650) of Part 1 of Division 6**, for aquatic plants taken incidental to the harvest of herring eggs.

Comment. Section 40515 continues former Fish and Game Code Section 8389(d) without substantive change.

PART 14. MACKEREL

TITLE 1. MACKEREL GENERALLY

§ 40550. Provisions not exclusive

40550. The provisions of this part are not intended to be exclusive. Other provisions that govern mackerel include, but are not limited to, the following provisions:

(a) Section 15915.

(b) Section 20710.

(c) Section 21015.

(d) **Section 10660.**

(e) **Section 10664.**

(f) **Section 10667.**

Comment. Section 40550 is new. It is added for drafting convenience.

TITLE 2. COMMERCIAL PROVISIONS

§ 40600. Application of title

40600. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 40600 is new. It is added for drafting convenience.

1 **§ 40605. Authorized take**

2 40605. Pacific mackerel may be taken under a revocable nontransferable permit
3 issued by the department to boat owners or operators under conditions prescribed
4 by the department.

5 **Comment.** Section 40605 continues former Fish and Game Code Section 8412 without
6 change.

7 **§ 40610. Federal fishery regulations**

8 40610. The department shall manage the Pacific mackerel resource in
9 conformance with the federal fishery regulations as recommended by the Pacific
10 Fishery Management Council and as adopted by the Secretary of Commerce.

11 **Comment.** Section 40610 continues former Fish and Game Code Section 8411 without
12 change.

13 **§ 40615. Unloading for use in cannery**

14 40615. (a) No mackerel intended for or used in any cannery shall be unloaded
15 from any vessel, except at a weighing or measuring device approved by the
16 Bureau of Weights and Measures.

17 (b) Those mackerel shall be weighed by a public weighmaster licensed as an
18 individual under the laws of this state, and a receipt as to that weight shall be
19 immediately issued by the weighmaster to the commercial fisherman at the time of
20 receipt of the products.

21 (c) Copies of the receipt shall be handled in the manner provided in Chapter 3
22 (commencing with Section 21000) and Chapter 4 (commencing with Section
23 21200) of Title 10 of Part 4 of Division 6.

24 **Comment.** Section 40615 continues the part of former Fish and Game Code Section 7702.1
25 applicable to mackerel without substantive change.

26 **§ 40620. Management of Pacific mackerel**

27 40620. The department shall manage the Pacific mackerel resource in
28 conformance with the federal fishery regulations as recommended by the Pacific
29 Fishery Management Council and as adopted by the Secretary of Commerce.

30 **Comment.** Section 40620 continues former Fish and Game Code Section 8411 without
31 change.

32 PART 15. MARLIN

33 TITLE 1. MARLIN GENERALLY

34 **§ 40700. Provisions not exclusive**

35 40700. The provisions of this part are not intended to be exclusive. Other
36 provisions that govern marlin include, but are not limited to, the following
37 provisions:

1 (a) Section 14875.

2 (b) Section 18030.

3 (c) Section 18395.

4 (d) Section 18800.

5 (e) Section 18805.

6 (f) Section 18810.

7 (g) Section 18815.

8 (h) Section 18820.

9 (i) Section 18825.

10 (j) Section 21950.

11 **Comment.** Section 40700 is new. It is added for drafting convenience.

12 **§ 40705. Transport of marlin meat out of state**

13 40705. Marlin meat may not be transported out of this state.

14 **Comment.** Section 40705 continues former Fish and Game Code Section 2354 without
15 substantive change.

16 **§ 40710. Department monitoring of take**

17 40710. (a) The department shall develop a voluntary participation program for
18 the use of departmental observers on board vessels to monitor the taking of marlin
19 by persons engaged in sport fishing.

20 (b) The department shall, in accordance with Section 2205, procure insurance
21 against the liability of the owners or operators of vessels boarded by observers in
22 the event of injury to or death of any observer in the course and scope of
23 employment as an observer.

24 **Comment.** Section 40710 continues former Fish and Game Code Section 7123 without
25 substantive change.

26 **TITLE 2. COMMERCIAL PROVISIONS**

27 **§ 40750. Application of title**

28 40750. For purposes of Section 37805, the provisions in this title are commercial
29 provisions.

30 **Comment.** Section 40750 is new. It is added for drafting convenience.

31 **§ 40755. Marlin meat**

32 40755. Except where Section 40760 has been complied with, marlin meat,
33 whether fresh, smoked, canned, or preserved by any means, shall not be bought or
34 sold, or possessed or transported for the purpose of sale.

35 **Comment.** Section 40755 continues former Fish and Game Code Section 8393(a) without
36 substantive change.

1 **§ 40760. Importation for producing fish cakes**

2 40760. (a) Notwithstanding the provisions of section 27205, black marlin
3 (Makaira Indica) may be imported into this state for the purpose of processing
4 (manufacturing) a product commonly known as fish cakes for human
5 consumption.

6 (b) All black marlin (Makaira Indica) imported into this state must be in an
7 identifiable condition, and must be accompanied by a bill of lading, showing the
8 name of the consignor, the consignee, and the weight or number of fish shipped. A
9 copy of the bill of lading must be delivered to the nearest office of the department
10 either prior to or no later than two days after receipt of the fish.

11 (c) No black marlin (Makaira Indica) imported into California may leave the
12 premises of the original consignee unless written permission is received from the
13 department, or unless processed into the form of the product commonly known as
14 fish cakes.

15 **Comment.** Section 40760 continues former Fish and Game Code Section 8393(b) without
16 substantive change.

17 **PART 16. SABLEFISH**

18 **TITLE 1. SABLEFISH GENERALLY**

19 **§ 40850. Provisions not exclusive**

20 40850. The provisions of this part are not intended to be exclusive. Other
21 provisions that govern sablefish include, but are not limited to, the following
22 provisions:

23 (a) Section 19230.

24 (b) Section 19500.

25 (c) Section 21020.

26 (d) Section 21225.

27 **Comment.** Section 40850 is new. It is added for drafting convenience.

28 **TITLE 2. COMMERCIAL PROVISIONS**

29 **§ 40900. Application of title**

30 40900. For purposes of Section 37805, the provisions in this title are commercial
31 provisions.

32 **Comment.** Section 40900 is new. It is added for drafting convenience.

33 **§ 40905. Required permit**

34 40905. Sablefish may be taken under a general trap permit in ocean waters
35 between a line extending due west true from Point Arguello in Santa Barbara

County and the United States-Mexico international boundary line, if all of the following criteria are also met:

(a) The trap shall be six feet or less in its greatest dimension.

(b) The mesh of any trap used for sablefish pursuant to this section shall measure not less than two inches by two inches.

(c) The traps may be used only in waters 200 fathoms or deeper.

(d) No permittee may possess a sablefish trap and any other commercial fishing gear aboard a vessel at the same time, except that spot prawn traps may be possessed during spot prawn trap open fishing periods as established by the commission, if the permittee has a valid spot prawn trap vessel permit that has not been suspended or revoked.

Comment. Section 40905 continues former Fish and Game Code Section 9001.8 without substantive change.

PART 17. SALMON

TITLE 1. SALMON GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 40950. Provisions not exclusive

40950. The provisions of this part are not intended to be exclusive. Other provisions that govern salmon include, but are not limited to, the following provisions:

(a) Section 1725.

(b) Section 9105.

(c) Section 11905.

(d) Section 13105.

(e) Section 13900.

(f) Section 14875.

(g) Section 15540.

(h) Section 18040.

(i) Section 18045.

(j) Section 18050.

(k) Section 18085.

(l) Section 18095.

(m) Section 18210.

(n) Section 18805.

(o) Section 21455.

(p) Section 22305.

(q) Section 22310.

(r) Section 24700.

1 (s) Section 24950.

2 (t) **Section 2080.2.**

3 (u) **Section 2080.3.**

4 (v) **Section 2080.4.**

5 (w) **Section 6100.**

6 (x) **Section 7155.**

7 (y) **Section 16000.**

8 (z) **Section 16500.**

9 (aa) **Section 16520.**

10 (bb) **Section 16531.**

11 (cc) **Section 16532.**

12 **Comment.** Section 40950 is new. It is added for drafting convenience.

13 **§ 40955. Legislative determination**

14 40955. (a) The Legislature finds and declares all of the following:

15 (1) The commercial fishing industry of the North Coast has been greatly affected
16 by decisions made by federal and state agencies concerning the health of the
17 salmon resource and the consequent shortening or closing of the season, further
18 impacting the already economically depressed region.

19 (2) Sportfishing on the North Coast, a staple of the tourism industry of the
20 region, could be substantially affected by the limitations of the salmon seasons.

21 (3) The method of determining salmon escapement counts on only the Klamath
22 River is inadequate for determining the overall health of the salmon resource in
23 northern California waters and consequent decisions regarding the commercial,
24 sport, and Indian salmon fisheries in those waters because it does not take into
25 consideration the escapement figures on the Eel River and the Smith River.

26 (b) The department shall use present assessment methods to assess the salmon
27 escapement count on the Eel River and the Smith River, as well as the Klamath
28 River, systems, employing out-of-work fishermen, where possible, to do the
29 counts with department personnel in supervisory capacities. Those figures shall be
30 used by the commission and the department in all reports, recommendations, and
31 decisions concerning the establishment of the commercial and sportfishing seasons
32 in the waters of the state and in all recommendations to the Pacific Fishery
33 Management Council or other regulatory agencies. This program shall be a
34 priority for funding under the Fisheries Restoration Act of 1985 (Chapter 3
35 commencing with Section 11900) of Title 2 of Part 4 of Division 6).

36 (c) The department shall install sonar fish counting devices on the Klamath
37 River system as a three-year test program to determine the accuracy of the devices,
38 and shall make recommendations to the Legislature by January 1, 1990, as to their
39 accuracy and whether they should be installed on other river systems. Present
40 assessment methods shall continue on the Klamath River system during the test
41 period as a control mechanism.

Comment. Section 40955 continues former Fish and Game Code Section 1000.6 without substantive change.

CHAPTER 2. TAKE OR POSSESSION

§ 41000. Salmon spawning areas

41000. The commission may designate salmon spawning areas. It is unlawful to take salmon in any such spawning area, or within 250 feet of any salmon spawning station.

Comment. Section 41000 continues former Fish and Game Code Section 310 without change.

§ 41005. Hook other than in mouth

41005. (a) It is unlawful, in inland waters, to kill or retain in possession any chinook, coho, or kokanee salmon that has not taken the bait or lure in its mouth.

(b) Any chinook, coho, or kokanee salmon hooked in inland waters other than in its mouth shall be released unharmed.

Comment. Section 41005 restates the part of former Fish and Game Code Section 5514 applicable to salmon without substantive change.

Note. Proposed Section 41005 is intended to restate the part of existing Fish and Game Code Section 5514 applicable to salmon to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“5514. (a) It is unlawful to kill or retain in possession any chinook, coho, or kokanee salmon or any steelhead that has not taken the bait or lure in its mouth, in inland waters.

(b) Any chinook, coho, or kokanee salmon or any steelhead hooked other than in its mouth in inland waters shall be released unharmed.”

In the existing section, the placement of the phrase “in inland waters” creates possible ambiguity as to whether the section is meant to apply generally to persons fishing in inland waters, or to specified salmon that were not hooked in their mouths while in inland waters. The Commission believes the former interpretation was intended, and proposed Section 41005 would make that interpretation express.

The Commission invites comment on whether the restatement of Section 5514 would cause any substantive change in its meaning.

§ 41010. Conformity with federal law

41010. The commission may prohibit the taking or possessing of salmon in the same manner as the taking or possessing of salmon is prohibited by federal law or by rules or regulations adopted by the United States Secretary of Commerce, notwithstanding any other provision of this code.

Comment. Section 41010 continues former Fish and Game Code Section 316.5 without change.

Note. Existing Section 316.5 provides that the Fish and Game Commission may prohibit the taking or possessing of salmon “in the same manner” as prohibited by federal law.

Should this provision be revised to make clear that the Commission’s authority to regulate the take or possession of salmon is not limited to take or possession that is regulated by federal law?

1 CHAPTER 3. IMPORTATION

2 § 41050. Importation of undersized salmon

3 41050. (a) It is unlawful to import into this state for commercial purposes any
4 salmon of smaller size than can be legally taken under regulations of either the
5 Pacific Fishery Management Council or the state of landing.

6 (b) Subdivision (a) does not apply to domestically reared salmon, defined by
7 commission regulations to include salmon that have returned to a hatchery or
8 licensed artificial collection facility, if imported under regulations established by
9 the commission.

10 **Comment.** Section 41050 continues former Fish and Game Code Section 2361 without
11 substantive change.

12 CHAPTER 5. COHO HELP ACT

13 § 41100. Name of act

14 41100. This chapter shall be known and may be cited as the Coho Salmon
15 Habitat Enhancement Leading to Preservation Act or Coho HELP Act.

16 **Comment.** Section 41100 continues former Fish and Game Code Section 6950 without
17 change.

18 § 41105. Definitions

19 41105. As used in this chapter:

20 (a) “Account” means the Coho Salmon Recovery Account created in subdivision
21 (a) of Section 41115.

22 (b) “Coho salmon habitat enhancement project” or “project” means a restoration
23 project within a region described in an adopted state or federal coho salmon
24 recovery plan with the primary purpose of accomplishing one or more of the
25 following:

26 (1) Modification of existing water crossings for the purposes of eliminating a
27 barrier to fish passage. Modification includes the removal of road crossings,
28 replacement of culverts, or both.

29 (2) Restoration of eroded or denuded streambanks by utilizing predominantly
30 nonrock bioengineering practices and revegetating stream corridors with native
31 riparian species. Restoration shall be focused on promoting tree establishment
32 along the active channel and on streambanks for the purposes of bank
33 stabilization, bank development, and live wood complexity.

34 (3) Wood placement that benefits naturally reproducing fish stocks by creating
35 or enhancing fish habitat, increasing stream complexity, or both.

36 (c) “Coho salmon recovery plans” means the department’s Recovery Strategy
37 for California Coho Salmon, the National Marine Fisheries Service’s Recovery
38 Plan for the Evolutionary Significant Unit of Central Coast Coho Salmon, the
39 National Marine Fisheries Service’s Recovery Plan for the Southern

1 Oregon/Northern California Coast Evolutionary Significant Unit of Coho Salmon,
2 or subsequently adopted coho salmon recovery plans.

3 (d) “Fish passage guidelines” means the department’s Coho Salmon Stream
4 Restoration Manual, the National Marine Fisheries Service, Southwest Region,
5 Guidelines for Salmonid Passage at Stream Crossings, either of those documents
6 as they may be subsequently amended or updated, or salmonid fish passage project
7 guidelines subsequently adopted by the department, the National Marine Fisheries
8 Service, or both.

9 (e) “Project proponent” means a person, public agency, or nonprofit
10 organization seeking to implement a coho salmon habitat enhancement project.

11 **Comment.** Section 41105 continues former Fish and Game Code Section 6952 without
12 substantive change.

13 **§ 41110. Required elements of project**

14 41110. (a) Notwithstanding any other provision of law, the director shall
15 approve a coho salmon habitat enhancement project if the project will maintain
16 existing levels of human health and safety protection, including, but not limited to,
17 flood protection, and meets all of the following requirements:

18 (1) The project is consistent with fish passage guidelines and coho salmon
19 recovery plans.

20 (2) The primary project purpose is for voluntary restoration.

21 (3) The project is no larger than five acres or 500 linear feet in size, measured by
22 calculating the direct area of impact.

23 (4) Completion of all phases of the coho salmon habitat enhancement project
24 will not exceed five years.

25 (5) The project will not result in cumulative negative environmental impacts that
26 are significant when viewed in connection with the effects of past, current, or
27 probable future projects.

28 (b) The director’s approval of a coho salmon habitat enhancement project
29 pursuant to subdivision (a) shall be in lieu of any other permit, license, or other
30 approval issued by the department, including, but not limited to, those issued
31 pursuant to **Chapter 6 (commencing with Section 1600) of Division 2, Chapter**
32 **10 (commencing with Section 1900) of Division 2, and Chapter 1.5**
33 **(commencing with Section 2050) of Division 3.**

34 (c) The director’s approval of a coho salmon habitat enhancement project
35 pursuant to subdivision (a) shall constitute an action taken by a regulatory agency,
36 as authorized by state law, to ensure the maintenance, restoration, or enhancement
37 of a natural resource where the regulatory process involves procedures for
38 protection of the environment.

39 (d) Within 60 days after the director receives a written request to approve a coho
40 salmon habitat enhancement project containing the information required pursuant
41 to subdivision (e), the director shall determine whether substantial evidence exists

1 that the coho salmon habitat enhancement project is consistent with subdivision
2 (a).

3 (e) A written request to approve a coho salmon habitat enhancement project
4 shall contain all of the following:

5 (1) The name, address, title, organization, telephone number, and electronic mail
6 address of the natural person or persons who will be the main point of contact for
7 the project proponent.

8 (2) A full description of the coho salmon habitat enhancement project that
9 includes the design criteria used for the project, restoration or enhancement
10 methods, an estimate of temporary restoration or enhancement-related disturbance,
11 project schedule, and how the project will result in a net benefit to coho salmon
12 and other affected species.

13 (3) A map clearly identifying the project location and photographs of the project
14 site.

15 (4) An assessment of the project area that provides a description of existing flora
16 and fauna and the potential presence of sensitive species or habitat.

17 (5) A description of environmental protection measures incorporated into the
18 project design, including, but not limited to, measures to avoid and minimize
19 impacts to water quality and potentially present species protected by state law, so
20 that no potentially significant negative environmental impacts will result from the
21 project.

22 (6) Substantial evidence to support a conclusion that the project meets the
23 criteria set forth in this section. Substantial evidence shall cite relevant design
24 criteria and environmental protection measures that are set forth in the fish passage
25 guidelines and coho salmon recovery plans.

26 (f) If the director determines at any time that the project is no longer consistent
27 with subdivision (a), due to a material change between the project as submitted
28 and the project being implemented or a change in environmental circumstances in
29 the area of implementation, the director shall notify the project proponent in
30 writing and project implementation shall be suspended or approval pursuant to this
31 chapter revoked. Written notice from the director shall be delivered in person or
32 by certified mail to the project proponent and shall specify the reasons why
33 ministerial approval of the project was suspended or revoked. The approval for a
34 project shall not be revoked pursuant to this subdivision unless it has first been
35 suspended pursuant to this subdivision.

36 (g) Within 30 days of receipt of a notice of suspension, the project proponent
37 may file an objection with the director. Any objection shall be in writing and state
38 the reasons why the project proponent objects to the suspension. The director shall
39 revoke approval or lift the suspension of project implementation within 30 days
40 after the end of the objection.

41 **Comment.** Section 41110 continues former Fish and Game Code Section 6953 without
42 substantive change.

1 **§ 41115. Coho Salmon Recovery Account**

2 41115. (a) The Coho Salmon Recovery Account is hereby created in the Fish
3 and Game Preservation Fund.

4 (b) The department may enter into an agreement to accept funds from any public
5 agency, person, business entity, or organization to achieve the purposes of this
6 chapter. The department shall deposit any funds so received in the account. The
7 funds received shall supplement existing resources for projects and programs that
8 enhance the recovery of coho salmon.

9 (c) The department may impose a schedule of fees for projects, based on the cost
10 of a project, sufficient to recover all reasonable administrative and implementation
11 costs of the department relating to the project, but not to exceed fees adopted by
12 the department pursuant to **Chapter 6 (commencing with Section 1600) of**
13 **Division 2** for standard lake or streambed alteration agreements for projects of
14 comparable cost. The department shall deposit fee revenues in the account.

15 (d) Moneys in the account shall be available to the department, upon
16 appropriation by the Legislature, for the purposes of administering and
17 implementing this chapter.

18 **Comment.** Section 41115 continues former Fish and Game Code Section 6954 without
19 substantive change.

20 **§ 41120. Emergency regulations**

21 41120. (a) The department may adopt emergency regulations for the
22 implementation of this chapter.

23 (b) A regulation adopted pursuant to this section or thereafter amended, and any
24 subsequent adjustment to that adoption or amendment, shall be adopted by the
25 department in accordance with Chapter 3.5 (commencing with Section 11340) of
26 Part 1 of Division 3 of Title 2 of the Government Code.

27 (c) The adoption of a regulation pursuant to this section is an emergency, and
28 shall be considered by the Office of Administrative Law as necessary for the
29 immediate preservation of the public peace, health, safety, and general welfare.

30 (d) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of
31 Division 3 of Title 2 of the Government Code, any emergency regulation adopted
32 by the department pursuant to this section shall remain in effect until revised by
33 the department.

34 **Comment.** Section 41120 continues former Fish and Game Code Section 6955 without
35 substantive change.

36 **§ 41125. Effective date of operation**

37 41125. This chapter shall remain in effect only until January 1, 2018, and as of
38 that date is repealed, unless a later enacted statute that is enacted before January 1,
39 2018, deletes or extends that date.

40 **Comment.** Section 41125 continues former Fish and Game Code Section 6956 without
41 substantive change.

1 TITLE 2. COMMERCIAL PROVISIONS

2 CHAPTER 1. PRELIMINARY PROVISIONS

3 § 41300. Application of title

4 41300. For purposes of Section 37805, the provisions in this title are commercial
5 provisions.

6 **Comment.** Section 41300 is new. It is added for drafting convenience.

7 § 41305. Definitions

8 41305. The following definitions govern the construction of this title:

9 (a) “Agent” means the person designated in writing by the owner as the owner’s
10 representative.

11 (b) “Appeal” means a request for reconsideration of an action of the review
12 board, the department, or the commission, pursuant to this title.

13 (c) “Change of ownership” means the transfer of ownership of a permitted
14 vessel to a new owner.

15 (d) “Commercial salmon vessel permit” means an annual permit issued by the
16 department to an owner of a commercial fishing vessel for use of that vessel to
17 take salmon for commercial purposes and shall not be considered personal
18 property.

19 (e) “Fishing potential” means the capability and capacity for harvesting salmon
20 of a particular commercial fishing vessel. “Fishing potential” includes, but is not
21 limited to, a rating based upon factors such as size, seaworthiness, propulsion
22 system, hold size, and hull design.

23 (f) “Permit” means a commercial salmon vessel permit as defined in subdivision
24 (d).

25 (g) “Permitted vessel” means a commercial fishing vessel for which a permit is
26 currently valid.

27 (h) “Replacement vessel” means a commercial fishing vessel for the use of
28 which a permit is proposed to be transferred pursuant to this title.

29 (i) “Review board” means the commercial salmon fishing review board created
30 pursuant to Section 41900.

31 (j) “Transfer” means the issuance of a permit for use of a replacement vessel.

32 **Comment.** Section 41305 generalizes former Fish and Game Code Section 8231 without
33 substantive change.

34 **Note.** Existing Fish and Game Code Section 8231 provides the definitions set forth in
35 proposed Section 41305, but only for purposes of the article in which Section 8231 appears
36 (Article 4.5 (commencing with Section 8230) of Chapter 2 of Part 3 of Division 6). Proposed
37 Section 41305 would generalize the definitions in existing Section 8231 so that they apply to all
38 commercial salmon fishing provisions in this proposed title.

39 **The Commission invites comment on whether that generalization would be problematic.**

1 CHAPTER 2. COMMERCIAL SALMON TROLLERS ENHANCEMENT AND
2 RESTORATION PROGRAM

3 **§ 41350. Declaration of legislative intent**

4 41350. (a) It is the intent of the Legislature that the department use the moneys
5 from the sale of commercial fishing salmon stamps allocated pursuant to
6 subdivision (b) of Section 41360, and the matching share contributed by the
7 department, to raise approximately two million chinook salmon annually to
8 yearling size, to contribute to the replenishing of California's salmon resource. In
9 no case shall moneys from the General Fund be used to match the salmon stamp
10 revenues expended for this program.

11 (b) It is the further intent of the Legislature that the salmon stamp fee authorized
12 in subdivision (b) of Section 41360 shall generate revenues equal to one-half the
13 amount necessary to raise this number of salmon to yearling size.

14 **Comment.** Section 41350 continues former Fish and Game Code Section 7861.3 without
15 substantive change.

16 **§ 41355. Commercial fishing salmon stamp requirement**

17 41355. (a) Except as provided in subdivision (f) or (g), no person who is 18
18 years of age or more and less than 70 years of age, on or before April 1 of the
19 current license year, shall take salmon for a commercial purpose or be on board a
20 vessel on which salmon are taken for a commercial purpose while salmon are
21 being taken or transported, unless that person has a commercial fishing salmon
22 stamp issued pursuant to this section affixed to his or her commercial fishing
23 license.

24 (b) Except as provided in subdivision (f) or (g), the operator of a vessel on
25 which salmon are taken for a commercial purpose shall not permit a person on
26 board that vessel while salmon are being taken or transported, unless that person
27 was less than 18 years of age or 70 years of age or more on April 1 of the current
28 license year or that person has a commercial fishing salmon stamp affixed to the
29 person's commercial fishing license.

30 (c) Except as provided in this subdivision, the department shall issue a
31 commercial fishing salmon stamp, upon application and payment of the fee of
32 eighty-five dollars (\$85). For any commercial salmon season preceded by a
33 commercial salmon season in which the commercial troll salmon landings in this
34 state equal or exceed 3,000,000 pounds dressed weight, as determined by the
35 department, the fee shall be increased by twelve dollars and fifty cents (\$12.50)
36 for every 250,000 pounds over 3,000,000 pounds of dressed weight landings,
37 except that the total fees as adjusted shall not exceed two hundred sixty dollars
38 (\$260).

39 (d) A commercial fishing salmon stamp is valid during the commercial salmon
40 season of the year in which it was issued.

1 (e) Upon application and payment of an additional fee equal to that prescribed in
2 subdivision (c), the department may issue an additional commercial fishing
3 salmon stamp for a crewmember to the owner or operator of a vessel who holds a
4 commercial fishing salmon stamp.

5 (f) Notwithstanding subdivision (a), one crewmember of a vessel for which a
6 commercial fishing salmon stamp is issued pursuant to subdivision (e) may be
7 aboard that vessel and take salmon for a commercial purpose as a crewmember on
8 that vessel without obtaining a commercial fishing salmon stamp, under the
9 following conditions:

10 (1) The crewmember is designated by name and commercial fishing license
11 number on a form furnished by the department before salmon are taken on the
12 vessel when that crewmember is aboard.

13 (2) The crewmember has a valid commercial fishing license issued under
14 Section 14500.

15 (3) The commercial fishing salmon stamp for the crewmember is affixed to the
16 form prescribed in paragraph (1) on which the vessel registration number of the
17 vessel is entered, and on which the crewmember who is exempted by this
18 subdivision is designated by the last entered name and commercial fishing license
19 number.

20 (g) Persons who are exempt from the license requirements, or who are not
21 required to be licensed, pursuant to Section 14500, are exempt from the
22 requirements of this section.

23 **Comment.** Section 41355 continues former Fish and Game Code Section 7860 without
24 substantive change.

25 **§ 41360. Use of fees from commercial fishing salmon stamps**

26 41360. (a) After deducting the administrative costs for issuing commercial
27 fishing salmon stamps, the department shall deposit the fees received pursuant to
28 Section 41355 in the Commercial Salmon Stamp Dedicated Subaccount, which is
29 hereby established in the Fish and Game Preservation Fund. The money in the
30 subaccount shall be available to the department, upon appropriation by the
31 Legislature, for new or expanded salmon restoration and enhancement programs in
32 the state that will serve to increase ocean salmon landings. No money in this
33 subaccount shall be used in lieu of other funds appropriated for salmon restoration
34 and enhancement programs authorized by law on or before January 1, 1988.

35 (b) Thirty dollars (\$30) of the fees collected for each commercial fishing salmon
36 stamp issued shall be allocated by the department to be used for raising chinook
37 salmon to a yearling size, at which size they shall be released into state waters.
38 The amount of salmon stamp revenues expended for this purpose in any fiscal year
39 shall not exceed the amount expended by the department for the same purpose
40 during the same period from other funds. The calculation of the amount expended
41 by the department for this purpose shall not include expenditures made by the
42 department for which reimbursements are received from state or federal agencies,

1 public utilities, or private entities for raising chinook salmon to yearling size as
2 part of a fish mitigation program instituted to compensate for the adverse effect of
3 a dam on natural salmon production. If the department expends no funds other
4 than moneys collected from the sale of commercial fishing salmon stamps or
5 moneys for which reimbursements are received as part of an anadromous fish
6 mitigation program for the raising of chinook salmon to yearling size within the
7 period of a fiscal year, the fees prescribed in Section 41355 shall be reduced by an
8 amount equivalent to that portion of the commercial fishing salmon stamp
9 program, as specified in this subdivision.

10 (c) If the salmon stamps issued pursuant to Section 41355 raise more money for
11 the purpose of subdivision (b) than is necessary to match the funds expended by
12 the department during any fiscal year from other funds, then the excess salmon
13 stamp revenue allocated pursuant to subdivision (b) shall be carried over into the
14 following fiscal year.

15 (d) The department shall post on its Internet Web site an accounting of the
16 projects undertaken with funds from the Commercial Salmon Stamp Dedicated
17 Subaccount, and the costs incurred to administer the program. At a minimum, the
18 Internet Web site shall list the project title, the applicant, a brief description of the
19 project, the amount approved, and the status of the project.

20 (e) Any moneys that were in the Commercial Salmon Stamp Account as of
21 March 14, 2013, and that were retained in the Fish and Game Preservation Fund,
22 shall be transferred to the Commercial Salmon Stamp Dedicated Subaccount.

23 (f) Not more than 15 percent of the funds expended pursuant to this section may
24 be used to pay the costs incurred in the administration of the program.

25 **Comment.** Subdivisions (a) through (e) of Section 41360 continue former Fish and Game
26 Code Section 7861 without substantive change.

27 Subdivision (f) continues former Fish and Game Code Section 7861.1 without substantive
28 change.

29 **§ 41365. Source of other funds for program**

30 41365. (a) Notwithstanding any other law, the department may receive on behalf
31 of the Commercial Salmon Trollers Enhancement and Restoration Program, for
32 deposit in the Commercial Salmon Stamp Dedicated Subaccount in the Fish and
33 Game Preservation Fund established pursuant to Section 41360, funds from
34 sources in addition to funds derived from the sale of commercial fishing salmon
35 stamps, including, but not limited to, grants from the federal government, grants
36 from private foundations, money disbursed from court settlements, and donations
37 and bequeaths from individuals.

38 (b) The additional nonfederal funds shall not be deposited in the Commercial
39 Salmon Stamp Dedicated Subaccount unless the person or entity providing the
40 funds specifically designates in writing, prior to or at the time of transmittal of the
41 funds to the department, that the funds are intended solely for deposit to that
42 subaccount.

(c) Funds received by the department that are not designated at the time of receipt as being intended solely for deposit to the Commercial Salmon Stamp Dedicated Subaccount shall be deposited in the Fish and Game Preservation Fund.

Comment. Section 41365 continues former Fish and Game Code Section 7861.2 without substantive change.

§ 41370. Allocation of funds

41370. In consultation with the Commercial Salmon Trollers Advisory Committee, the department may allocate funds from the Commercial Salmon Stamp Dedicated Subaccount in the Fish and Game Preservation Fund for the following purposes:

(a) For restoration projects to assist in the recovery of salmon stocks listed as threatened or endangered under **Chapter 1.5 (commencing with Section 2050) of Division 3**, or the federal Endangered Species Act (16 U.S.C. Sec. 1531 et seq.).

(b) As matching funds for federal salmon restoration moneys.

Comment. Section 41370 continues former Fish and Game Code Section 7861.5 without change.

§ 41375. Funding priority

41375. A priority for funding shall be given to programs and projects restoring, enhancing, and protecting salmon streams with funds appropriated pursuant to subparagraph (A) of paragraph (1) of subdivision (e) of Section 5907 of the Public Resources Code, which employ fishermen who are unemployed or underemployed as a result of commercial fishing restrictions within and immediately adjacent to the Klamath Management Zone imposed by federal laws or regulations.

Comment. Section 41375 continues former Fish and Game Code Section 7861.4 without substantive change.

§ 41380. Advisory Committee

41380. (a) A Commercial Salmon Trollers Advisory Committee shall be established consisting of six members selected by the director, as follows:

(1) One member shall be chosen from the personnel of the department.

(2) Four persons shall be selected, with alternates, from a list submitted by a fishermen's organization deemed to represent the commercial salmon fishermen of California.

(3) One member shall be selected, with an alternate, from lists submitted by individual commercial passenger fishing boat operators or by organizations deemed to represent the commercial passenger fishing boat operators of California.

(b) The term of appointment to the committee shall be for two years.

(c) Necessary and proper expenses, if any, and per diem shall be paid committee members from the special account created pursuant to subdivision (a) of Section

1 41360. The rate of per diem shall be the same as the rate established pursuant to
2 Section 8902 of the Government Code.

3 (d) The committee shall recommend programs and a budget from the special
4 account to the department.

5 **Comment.** Section 41380 continues former Fish and Game Code Section 7862 without
6 substantive change.

7 **§ 41385. Creation of artwork or related material for sale**

8 41385. (a) The Commercial Salmon Trollers Advisory Committee may also
9 recommend to the director that a nonprofit organization or the California Salmon
10 Council be authorized to create or contract to create salmon or salmon fishing
11 artwork and other materials based on that artwork, including, but not limited to, a
12 stamp, and offer those items for sale to the public during 2003 and thereafter, for
13 the purpose of augmenting funding for the Commercial Salmon Trollers
14 Enhancement and Restoration Program established under this chapter.

15 (b) The committee may not recommend a nonprofit organization or the
16 California Salmon Council as authorized under subdivision (a), unless all of the
17 following conditions are met:

18 (1) The proposed creation and sale of the artwork is pursuant to a written
19 business plan presented to the committee.

20 (2) The committee determines that a reasonable share of the sales of any stamp
21 will be remitted to the department for deposit into the Commercial Salmon Stamp
22 Dedicated Subaccount established in the Fish and Game Preservation Fund under
23 Section 41360.

24 (3) The committee determines that the creation and sale of the artwork will act
25 to increase public awareness and support for the salmon stamp program and the
26 restoration of salmon and their habitats in the state.

27 (4) Any other conditions deemed necessary by the committee for determining
28 whether to recommend approval to the director have been met.

29 (c) The director, upon receiving the recommendation of the committee, and
30 upon finding that there will be no new costs to the department, may authorize the
31 recommended entity to create or contract to create salmon or salmon fishing
32 artwork and other materials based on that artwork, including, but not limited to, a
33 stamp, and offer those items for sale to the public, for the purpose described in
34 subdivision (a).

35 (d) No person or entity, including, but not limited to, any nonprofit organization,
36 may use the name of the Commercial Salmon Stamp, the Commercial Salmon
37 Trollers Advisory Committee, or the Commercial Salmon Trollers Enhancement
38 and Restoration Program for the sale of artwork and other materials, unless that
39 person or entity has been approved by the director under this section for that
40 purpose. The approval of the director under this section shall be for one year, after
41 which the approval may be renewed for an additional year, upon recommendation
42 of the committee.

(e) No artwork sold in the form of a stamp under this section conveys to the purchaser any entitlement to engage in the commercial salmon fishery.

(f) Proceeds from the sales of artwork and other materials sold under this section, after deduction of all reasonable costs borne by the nonprofit organization or California Salmon Council for creation of the artwork and conducting the sales, shall be deposited in the Commercial Salmon Stamp Dedicated Subaccount.

Comment. Section 41385 continues former Fish and Game Code Section 7862.5 without substantive change.

§ 41390. Inoperative date of chapter

41390. This chapter shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

Comment. Section 41390 continues former Fish and Game Code Section 7863 without substantive change.

CHAPTER 3. PERMISSIONS AND PROHIBITIONS

§ 41450. Authorized take

41450. (a) Except as modified by the director pursuant to Section 22405, salmon may be taken under authority of a commercial fishing license and a commercial fishing salmon stamp only in Districts 2570, 2575, 2590, 2595, 2610, 2615, 2620, and 2625.

(b) All species of salmon, except silver salmon, may be taken only between April 15 and September 30. Silver salmon may be taken only between May 15 and September 30.

(c) No king salmon may be possessed that is less than 26 inches in length and no silver salmon may be possessed that is less than 22 inches. The length of salmon is to be measured from the tip of the snout to the extreme tip of the tail without resorting to any force other than swinging or fanning the tail.

(d) Salmon may be taken for commercial purposes only by hook and line, and there is no bag limit.

Comment. Section 41450 continues former Fish and Game Code Section 8210.2 without substantive change.

§ 41455. Possession, sale, offer for sale, or purchase

41455. Salmon may be possessed, sold, offered for sale, or purchased only under one of the following conditions:

(a) If taken legally in another state that permits the sale of salmon, and lawfully imported consistent with Section 41050.

(b) If taken in compliance with this chapter.

Comment. Section 41455 combines and restates former Fish and Game Code Section 8217, and the part of Section 8371(c)-(d) applicable to salmon, without substantive change.

1 **Note.** Proposed Section 41455 is intended to combine and restate existing Fish and Game
2 Code Section 8217, and the part of Section 8371(c)-(d) applicable to salmon, to clarify the
3 meaning of those provisions without changing their substantive effect. The existing provisions
4 read as follows:

5 “8217. Salmon may be sold subject to the exceptions and restrictions contained in this article.

6 8371. Striped bass and salmon may be sold or offered for sale only under the following
7 conditions:

8 (a) If the striped bass is taken or possessed by, and is the cultured progeny of, an aquaculturist
9 who is registered under Section 15101, that striped bass may be sold or purchased subject to
10 regulations of the commission.

11 (b) If the striped bass is taken legally in another state that permits the sale of that fish and if the
12 fish is lawfully imported under Section 2363, the striped bass may be possessed, sold, or
13 purchased.

14 (c) If the salmon is taken legally in another state that permits the sale of salmon, and is lawfully
15 imported consistent with Section 2361, the salmon may be possessed, sold, or purchased.

16 (d) If the salmon is taken in accordance with Article 4 (commencing with Section 8210.2), the
17 salmon may be possessed, sold, or purchased.”

18 **The Commission invites comment on whether the proposed combining and restatement**
19 **would cause any substantive change in the meaning of the provisions.**

20 **§ 41460. Sale during period when take unlawful**

21 41460. During the period when salmon may not be taken for commercial
22 purposes in a district, salmon may be sold in that district only under the
23 regulations of the commission.

24 **Comment.** Section 41460 continues former Fish and Game Code Section 8213 without
25 substantive change.

26 **§ 41465. Take at mouth of Humboldt Bay**

27 41465. It is unlawful to take salmon for commercial purposes at the mouth of
28 Humboldt Bay in those portions of Districts 2570 and 2575 within three nautical
29 miles north and south of a line drawn due west for three nautical miles from the
30 center of the mouth of that bay.

31 **Comment.** Section 41465 continues former Fish and Game Code Section 8214 without
32 substantive change.

33 **§ 41470. Sale, possession, or transport of silver salmon in specified districts**

34 41470. Silver salmon may not be sold or possessed in, or transported through,
35 District 2570, 2575, 2590, 2595, 2610, 2615, or 2620, during the time when the
36 taking of silver salmon for commercial purposes is unlawful in those districts.

37 **Comment.** Section 41470 continues former Fish and Game Code Section 8215 without
38 substantive change.

39 **§ 41475. Undersized salmon**

40 41475. It is unlawful to gaff, club, otherwise injure, or possess any king or silver
41 salmon under the legal size.

1 **Comment.** Section 41475 continues former Fish and Game Code Section 8218 without
2 change.

3 **§ 41480. Take for commercial purpose in District 2570 or 2575**

4 41480. Salmon may not be taken for commercial purposes in District 2570 at the
5 mouths of the Smith and Klamath Rivers within three nautical miles north and
6 south of a line drawn due west for three nautical miles from the center of the
7 mouth of each of those streams, or during the months of August and September in
8 District 2575 at the mouth of the Eel River within two nautical miles north and
9 south of a line drawn due west for two nautical miles from the center of the mouth
10 of that stream.

11 **Comment.** Section 41480 continues former Fish and Game Code Section 8219 without
12 substantive change.

13 **§ 41485. Take with purse or round haul net**

14 41485. Salmon may not be taken with a purse or round haul net.

15 **Comment.** Section 41485 continues the part of former Fish and Game Code Section 8756
16 applicable to salmon without substantive change.

17 **§ 41490. Use of trawl net**

18 41490. (a) Except as provided in subdivision (b), it is unlawful for any person to
19 possess salmon on board, or to land salmon from, a vessel on which exists any
20 type of trawl net.

21 (b) Salmon taken incidentally with other species with a trawl net may be
22 possessed and landed if authorized to be taken incidentally pursuant to Section
23 663.10 of Part 663 of Title 50 of the Code of Federal Regulations, pursuant to a
24 permit issued by the commission under Section 19900, or pursuant to both.

25 **Comment.** Section 41490 continues former Fish and Game Code Section 8834.1 without
26 substantive change.

27 **§ 41495. Required return to water if caught in net**

28 41495. (a) Any salmon that is taken in any type of net shall, regardless of its
29 condition, be immediately freed and removed from the net by the fisherman, and
30 immediately returned to the water without further harm.

31 (b) A commercial fisherman shall not have any salmon, whether dead or alive,
32 in his or her possession, at any time when conducting netting operations or when
33 going to or from those operations, except when releasing a salmon from a net.

34 (c) The return of salmon to the water pursuant to this section is not deterioration,
35 waste, or spoilage of fish for purposes of Section 14310.

36 **Comment.** Section 41495 continues the part of former Fish and Game Code Section 8370
37 applicable to salmon without substantive change.

1 **§ 41500. Revocation or suspension of license**

2 41500. (a) In addition to any other applicable penalty, the commercial fishing
3 license of the master of a vessel may be revoked or suspended by the commission,
4 when requested by the department, for a period not to exceed one year, upon the
5 second conviction in three years of the master or the master's agent, servant,
6 employee, or any other person acting under the master's direction or control, for a
7 violation of any provision of this chapter.

8 (b) A master's license shall not be revoked unless both the first and second
9 convictions are for a violation by the master or a violation occurring when the
10 person convicted was acting as the master's agent, servant, employee, or acting
11 under the master's direction or control.

12 **Comment.** Section 41500 restates the part of former Fish and Game Code Section 12002.8(d)
13 and (e) applicable to the provisions of this chapter, without substantive change.

14 **Note.** Proposed Section 41500(a) is intended to restate the part of existing Fish and Game
15 Code Section 12002.8(d) applicable to this chapter, to clarify the meaning of that existing
16 provision without changing its substantive effect. The existing provision begins as follows, with
17 the restated language italicized:

18 “Notwithstanding *Sections 12000, 12001, and 12002*, the commercial fishing license of the
19 master of a vessel may be revoked or suspended by the commission, when requested by the
20 department....”

21 **The Commission invites comment on whether the restatement of the italicized language in**
22 **proposed Section 41500(a) would cause any substantive change in the meaning of the**
23 **provision.**

24 CHAPTER 4. HIGH SEAS INTERCEPTION OF SALMON

25 **§ 41600. Definitions**

26 41600. The definitions in this section govern the construction of this chapter:

27 (a) “Environmental purpose” means the intent to prevent or minimize adverse
28 ecological effects to water quality.

29 (b) “High seas interception” means the unauthorized taking of salmon for
30 commercial purposes outside the United States 200-mile fishery conservation
31 zone.

32 (c) “Humanitarian purpose” means the intent to provide medical services for a
33 sick or injured person, or to prevent the loss of human life.

34 (d) “Process” means affecting the condition or location of salmon, including
35 preparation, packaging, storage, refrigeration, or transportation.

36 (e) “Unauthorized” means contrary to a statute or regulation of the United States
37 or this state or to a treaty or international fishery agreement, or in violation of a
38 foreign law.

39 (f) “Written instrument” means hand written or printed matter, including
40 vessels' logs and papers, bills of lading and sale, documents relating to processing,
41 shipping, and customs, and information stamped on or affixed to cans, crates,
42 containers, freight, or other means of storage or packaging.

1 **Comment.** Section 41600 continues former Fish and Game Code Section 8120 without
2 substantive change.

3 **§ 41605. Prohibited acts generally**

4 41605. It is unlawful for any person to do any of the following:

5 (a) Buy, sell, trade, process, or possess salmon, or attempt to buy, sell, trade,
6 process, or possess salmon, with the knowledge that the salmon has been, or will
7 be, obtained by high seas interception.

8 (b) Knowingly provide financing, premises, equipment, supplies, services,
9 power, or fuel used to buy, sell, trade, process, or possess salmon that has been, or
10 will be, obtained by high seas interception.

11 (c) Act as a broker or middleman, or otherwise act on behalf of another person,
12 to arrange for or negotiate, or attempt to arrange for or negotiate, the purchase,
13 sale, trade, processing, or possession of salmon, with the knowledge that the
14 salmon has been, or will be, obtained by high seas interception.

15 (d) Create, circulate, or possess any written instrument related to salmon with
16 the knowledge that the written instrument conveys misleading or untrue
17 information about the ownership, possession, processing, origin, destination, route
18 of shipping, type, or condition of salmon, or the time, place, and manner of the
19 taking of the salmon.

20 **Comment.** Subdivisions (a) through (c) of Section 41605 continue former Fish and Game
21 Code Section 8121 without substantive change.

22 Subdivision (d) continues former Fish and Game Code Section 8122 without change.

23 **§ 41610. Prohibited acts on vessel known to contain unlawfully obtained salmon**

24 41610. (a) It is unlawful for a person who knows that a vessel contains salmon
25 obtained by high seas interception, or that the owner or operator of the vessel
26 intends to engage in the high seas interception of salmon, to do any of the
27 following:

28 (1) Move persons, cargo, or other property to or from the vessel.

29 (2) Service or repair the vessel or its equipment.

30 (3) Provide the vessel with power, supplies, equipment, or fuel.

31 (4) Provide the vessel with information, other than weather reports, capable of
32 aiding the high seas interception of salmon or frustrating or avoiding detection,
33 including communicating the movements, intentions, or activities of state or
34 federal law enforcement officials or other fishing vessels.

35 (5) Permit the vessel to dock or anchor, or to remain docked or anchored, if that
36 person is responsible for the operation of the facility, harbor, or anchorage.

37 (b) This section does not prohibit any person from performing any act or acts set
38 forth in subdivision (a) if that person reasonably believes that the act or acts were
39 necessary for humanitarian or environmental purposes or to prevent a significant
40 loss of property, if that person provides immediate notice, by the quickest
41 available means, to the United States Coast Guard, the department, or any law
42 enforcement agency, as to the type of assistance provided and the circumstances

involved.

Comment. Section 41610 continues former Fish and Game Code Section 8123 without substantive change.

CHAPTER 5. COMMERCIAL SALMON VESSEL PERMITS

Article 1. General Provisions

§ 41650. Legislative declaration

41650. (a) The Legislature finds and declares that commercial salmon fishing is in the public interest and that the preservation of commercial salmon fishing directly affects the health and welfare of the public. The Legislature further finds and declares that, due to past declines in salmon stocks, the increase in the quality and value of salmon on the market, the number and types of vessels being used, the commensurate salmon fishing potential of the commercial salmon fishing fleet, and the demand for entry into the commercial salmon fishery, it is necessary and proper to limit the persons who are eligible to take salmon for commercial purposes and to regulate the amount of salmon that may be taken by restricting the number and salmon fishing potential of the vessels in the commercial salmon fishing fleet in order to preserve and rebuild the salmon resource, to protect commercial salmon fishing, and thereby to protect the health and welfare of the public.

(b) The Legislature further finds and declares the following:

(1) The salmon resource declined in 1983 and 1984 as a result of the most severe warm water El Nino current of this century, which caused major disruptions and hardship in the commercial salmon fishery. Habitat destruction in the rivers of California has also depleted the salmon stocks which are bred and reared in those rivers.

(2) The Pacific Fishery Management Council has imposed season closures on the taking of salmon since 1982, including a total prohibition on commercial taking of salmon in 1985 along portions of the northern California coast to protect the king salmon stock from the Klamath River. In 1987, a five-year agreement was signed which allocates the king salmon stock from the Klamath River between ocean commercial and recreational users and in-river Indian and recreational users. This agreement may result in further closures.

(3) Nearly 30 percent of the commercial salmon fishing vessels which were permitted to take salmon for commercial purposes in California did not record landings of salmon in the 1986 and 1987 commercial salmon seasons.

(4) There are more than enough commercial salmon fishing vessels for which commercial salmon fishing permits have been issued to harvest the less than 10 million pounds of salmon that are currently available annually. With the present fleet makeup between large vessels and small vessels and between full-time and part-time fishermen, it is estimated that the present resource capacity may

1 accommodate a fleet of not more than 2,500 permitted vessels. Therefore, no new
2 permits should be issued until the time that the fleet size falls below 2,500
3 permitted vessels. Adequate provision for entry of new persons or vessels to the
4 commercial salmon fishery is afforded by transfers of vessels for which permits
5 have been issued and renewed and by transfers of those existing permits to vessels
6 of the same or less salmon fishing potential.

7 **Comment.** Section 41650 continues former Fish and Game Code Section 8230 without
8 change.

9 **§ 41655. Severability of provisions**

10 41655. If any provision of this chapter, or the application of those provisions, to
11 any person or circumstance, is held invalid, that invalidity shall not affect other
12 provisions or applications of the chapter that can be given effect without the
13 invalid provision or application, and to this end the provisions of those chapters
14 are severable.

15 **Comment.** Section 41655 continues former Fish and Game Code Section 8248 without
16 substantive change.

17 **§ 41660. Regulation and administrative procedures**

18 41660. (a) The commission and the department may make and enforce
19 regulations that may be necessary or convenient for carrying out any power,
20 authority, or jurisdiction delegated to it under this chapter.

21 (b) The department, in cooperation with the commercial salmon fishing review
22 board, shall establish and implement administrative procedures for the
23 administration of this chapter.

24 **Comment.** Subdivision (a) of Section 41660 continues former Fish and Game Code Section
25 8246.8 without substantive change.

26 Subdivision (b) continues former Fish and Game Code Section 8239.2 without substantive
27 change.

28 **§ 41665. Commercial take or possession on vessel**

29 41665. It is unlawful to take or possess salmon for a commercial purpose on a
30 vessel unless all of the following conditions are met:

31 (a) The vessel is registered with the department pursuant to Section 14755, and
32 the owner of the vessel has a valid commercial salmon vessel permit for the use of
33 that vessel.

34 (b) The permit for the use of the vessel is affixed to the vessel adjacent to the
35 department registration number unless otherwise authorized by the department.

36 (c) The permit affixed to the vessel is visible at all times.

37 **Comment.** Section 41665 continues former Fish and Game Code Section 8232 without
38 substantive change.

1 **§ 41670. Take for sport purposes**

2 41670. (a) Except as provided in this section, it is unlawful to take salmon for
3 sport purposes on a permitted vessel.

4 (b) Subdivision (a) does not prohibit taking salmon for sport purposes under a
5 sportfishing or a sport ocean fishing license, which is issued pursuant to Title 2
6 (commencing with Section 12850) of Part 5 of Division 6, on a vessel licensed as
7 a commercial passenger fishing boat pursuant to Section 21905 and engaged in
8 that business on any day when salmon are not being taken for commercial
9 purposes on that vessel.

10 (c) Subdivision (a) does not prohibit taking salmon for sport purposes under a
11 sportfishing or a sport ocean fishing license, which is issued pursuant to Title 2
12 (commencing with Section 12850) of Part 5 of Division 6, on a permitted vessel in
13 the Klamath Management Zone, as designated by the federal Pacific Fisheries
14 Management Council, when the commercial salmon season is closed and more
15 than 24 hours after the time when salmon taken during the commercial salmon
16 season are required to be landed.

17 (d) The use of a vessel pursuant to subdivision (c) shall be considered as being
18 engaged or employed exclusively in the taking and possession of fish or other
19 living resource of the sea for commercial purposes for purposes of subdivision (a)
20 of Section 227 of the Revenue and Taxation Code

21 **Comment.** Section 41670 continues former Fish and Game Code Section 8232.5 without
22 substantive change.

23 **§ 41675. Conditions for issuance of any permit**

24 41675. The department shall not issue a permit under this chapter unless one of
25 the following first occurs:

26 (a) The applicant presents to the department a commercial fishing salmon stamp
27 issued to the owner or an agent of the owner. No commercial fishing salmon
28 stamp shall be presented or accepted by the department to authorize issuance of a
29 permit under this section for more than one vessel.

30 (b) The applicant obtains a commercial fishing salmon stamp and pays the fees
31 for the stamp.

32 (c) On or before April 1 of the current license year, the owner is 70 years of age.

33 **Comment.** Section 41675 continues former Fish and Game Code Section 8234(a) without
34 substantive change.

35 **§ 41680. Inapplicability of limited fishery eligibility provision**

36 41680. Section 22500 does not apply to this chapter.

37 **Comment.** Section 41680 continues former Fish and Game Code Section 8233.9 without
38 substantive change.

1 **§ 41685. Allowable number of permitted vessels**

2 41685. (a) If the department determines that the number of permitted vessels is
3 less than 2,500, the department shall determine, after consultation with the review
4 board, the number and vessel classification for which any new, original permits
5 may be issued to bring the total number of permitted vessels to no more than
6 2,500.

7 (b) New, original permits to be issued shall be authorized by vessel
8 classifications established under subdivision (a) of Section 41745.

9 Comment. Section 41685 continues former Fish and Game Code Section 8243 without
10 substantive change.

11 **§ 41690. New entry permit**

12 41690. A person seeking to gain entry into the commercial salmon fishery may
13 obtain a permit under either of the following conditions:

14 (a) By legally obtaining the ownership of a permitted vessel and notifying the
15 department of the change of ownership of the permitted vessel.

16 (b) By applying to obtain a new, original permit issued by the department
17 pursuant to Sections 41695 and 41700.

18 **Comment.** Section 41690 continues former Fish and Game Code Section 8242 without
19 substantive change.

20 **§ 41695. Application for new entry permit**

21 41695. (a) An applicant may apply for a new, original permit as an individual, a
22 joint venture, or a corporation. The applicant may submit only one application
23 annually. The application shall be made on a form provided by the department.

24 (b) An applicant for a new, original permit under this section shall submit a
25 completed application as directed by the department. The completed application,
26 and the application fees prescribed in subdivision (c), shall be delivered or
27 postmarked on or before February 1 in order to be considered for permits for the
28 subsequent permit year.

29 (c) The applicant shall submit with the application a nonrefundable application
30 fee determined by the department in an amount sufficient to pay the costs of
31 administering the issuance of new, original permits by the department, which shall
32 be not less than thirty-five dollars (\$35).

33 (d) The department, after consultation with the review board, shall determine the
34 fishing potential of the vessel for use of which the new, original permit is to be
35 issued and otherwise determine if the applicant is eligible to be issued a permit
36 under this chapter.

37 **Comment.** Section 41695 continues former Fish and Game Code Section 8244 without
38 substantive change.

1 **§ 41700. Drawing for new entry permits**

2 41700. (a) The department shall conduct a drawing from the applicants
3 determined to be eligible for new, original permits pursuant to Section 41695 on
4 the first Friday in March of each year that new, original permits are authorized to
5 be issued pursuant to Section 41685.

6 (b) The department shall issue a permit to each of those applicants who are
7 drawn upon payment of the fees prescribed in subdivision (c) for the permit and,
8 except as provided in subdivision (e), submittal of sufficient information to
9 establish that the applicant is the owner of a vessel within the vessel classification
10 designated in the application.

11 (c) The amount of the fees for a permit issued under this section are the same as
12 the amount of the fees for renewal of a permit for the subsequent license year
13 beginning on April 1 which are established pursuant to subdivision (b) of Section
14 41725. A successful applicant shall pay the fees for the permit on or before March
15 31. The department shall deposit the fees to the fund pursuant to Section 3600.

16 (d) Except as provided in subdivision (e), a successful applicant shall submit
17 proof of ownership of the vessel to be used under the permit within 90 days of the
18 drawing.

19 (e) A successful applicant may request one extension of no more than 90 days to
20 obtain a vessel as designated in the application. The department, after consultation
21 with the review board, may grant that extension.

22 (f) If any successful applicant does not establish that he or she is the owner of a
23 vessel as designated in the application and affix the new permit on that vessel or
24 on another vessel with the same or less fishing potential, as determined by the
25 department after consultation with the board, within 90 days or by the end of a 90
26 day extension granted by the department, the new permit is null and void.

27 (g) The department or the review board is not liable for any risk of failure by the
28 applicant to obtain a vessel which is designated in an application or to complete
29 the process for determination of the fishing potential of another vessel, or for
30 failure by the applicant to obtain that other vessel, in the time prescribed in this
31 section.

32 **Comment.** Section 41700 continues former Fish and Game Code Section 8245 without
33 substantive change.

34 **§ 41705. Review of new entry provisions**

35 41705. The review board shall review the effectiveness of new entry provisions
36 every three years beginning three years following the first permit drawing and
37 make recommendations to the department for any changes it finds to be needed in
38 the new entry system.

39 **Comment.** Section 41705 continues former Fish and Game Code Section 8245.5 without
40 change.

1 **§ 41710. Issuance of new entry permit**

2 41710. Except as otherwise provided in this chapter, the department shall issue a
3 permit to the owner of a commercial salmon fishing vessel that is registered with
4 the department pursuant to Section 14755 for the new entry of that vessel into the
5 commercial salmon fishery, if that owner is authorized to be issued a permit for
6 the use of that new entry vessel pursuant to subdivision (b) of Section 41700.

7 **Comment.** Section 41710 continues former Fish and Game Code Section 8233.8 without
8 substantive change.

9 **§ 41715. Renewal required prior to expiration**

10 41715. Except as otherwise provided in this chapter, a permit shall be renewed
11 prior to expiration.

12 **Comment.** Section 41715 continues the first sentence of former Fish and Game Code Section
13 8233 without substantive change.

14 **§ 41720. Department to send renewal notice and application**

15 41720. (a) The department shall send a written notice of renewal and a permit
16 renewal application to the owner of each currently permitted vessel at the most
17 recent address of that owner in the records of the department. The notice shall be
18 sent by first-class mail before March 1. The department shall mail a copy of the
19 notice for renewal to all associations and groups known to the department to be
20 representing commercial salmon fishermen. The department shall also provide
21 blank permit renewal applications at appropriate offices of the department.

22 (b) The notice shall include all of the following:

23 (1) Instructions on how to apply for renewal of a permit.

24 (2) Information on the provisions of subdivisions (c) and (e) of Section 41725.

25 (c) Failure to receive the notice under this section does not exempt or excuse the
26 owner from the requirement of annual renewal of the permit on or before the
27 permit expiration date.

28 **Comment.** Section 41720 continues former Fish and Game Code Section 8236 without
29 substantive change.

30 **§ 41725. Renewal of permit**

31 41725. (a) The owner of a permitted vessel, or that owner's agent, may apply for
32 renewal of the permit annually on or before April 30, upon payment of the fees
33 established under subdivision (b), without penalty. Upon receipt of the application
34 and fees, the department shall issue the permit for use of the permitted vessel in
35 the subsequent permit year only to the owner of the permitted vessel.

36 (b) The department shall fix the annual fee for the renewal of the permit in an
37 amount it determines to be necessary to pay the reasonable costs of implementing
38 and administering this chapter.

39 (c) If an owner to whom a permit has been issued, or that owner's agent, applies
40 for renewal of the permit, the application for renewal shall be received or, if

1 mailed, postmarked, on or before April 30. An application received or, if mailed,
2 postmarked, after April 30 shall be assessed a late fee subject to Section 14605.
3 The department shall issue the permit for use of the permitted vessel in the
4 subsequent permit year.

5 (d) The department shall suspend a late fee otherwise due under subdivision (c)
6 and shall issue a permit for use of the permitted vessel in the subsequent permit
7 year if the department is unable to accept applications for renewal of permits by
8 March 1.

9 (e) Except as provided in subdivision (c), the department shall not renew a
10 permit for which the application for renewal is not received, or, if mailed, is
11 received or postmarked after expiration of the permit.

12 **Comment.** Section 41725 continues former Fish and Game Code Section 8235 without
13 substantive change.

14 **§ 41730. Issuance of permit after renewal**

15 41730. Except as otherwise provided in this chapter, the department shall issue a
16 permit, upon application and payment of the renewal fees pursuant to Section
17 41725, that is valid for the subsequent permit year, to the owner of a permitted
18 vessel that is registered with the department pursuant to Section 14755.

19 **Comment.** Section 41730 continues former Fish and Game Code Section 8233.3 without
20 substantive change.

21 **§ 41735. Change of ownership of vessel**

22 41735. (a) Except as otherwise provided in this chapter, the department shall
23 change the designation of the holder of a permit to the new owner of a permitted
24 vessel upon receipt of a notice of change of ownership of the permitted vessel,
25 whether the change of ownership is by contract, by operation of law, or otherwise.

26 (b) The permit shall not be transferred to any other vessel, except by the
27 issuance of a permit for use of the replacement vessel pursuant to subdivision (c)
28 subdivision (b) of Section 41660, and Sections 41740, 41750, 41755, and 41765.

29 (c) The owner of the permitted vessel may seek to retire the permitted vessel
30 from the commercial salmon fishery and apply for transfer of the permit, to be
31 issued pursuant to subdivision (j) of Section 41740, for use of a replacement
32 vessel.

33 (d) A permit changed pursuant to this section is valid for the permit year during
34 which it is issued.

35 (e) Upon change of the designation of the holder of the permit, all rights,
36 privileges, and obligations of a permit holder, including rights of renewal, are
37 transferred to the new owner of the permitted vessel.

38 **Comment.** Section 41735 combines and restates former Fish and Game Code Sections 8233.5
39 and 8237 without substantive change.

Note. Proposed Section 41735 is intended to combine and restate existing Fish and Game Code Sections 8233.5 and 8237 to improve their clarity, without changing their substantive effect. The existing provisions read as follows:

“8233.5. Except as otherwise provided in this article, the department shall change the designation of the holder of a permit, and with it shall go all rights, privileges, and obligations of a permit holder, including rights of renewal, upon receipt of a notice of change of ownership to a new owner of a permitted vessel upon change of ownership in the permitted vessel. A permit changed pursuant to this section is valid for the permit year during which it is issued.

8237. (a) The department shall change the designation of the holder of a permit to the new owner of a permitted vessel upon change of ownership of the permitted vessel, whether the change of ownership is by contract, by operation of law, or otherwise.

(b) The permit shall not be transferred to any other vessel, except by the issuance of a permit for use of the replacement vessel pursuant to subdivision (c) and Sections 8239 to 8241, inclusive.

(c) The owner of the permitted vessel may seek to retire the permitted vessel from the commercial salmon fishery and apply for transfer of the permit, to be issued pursuant to Section 8241, for use of a replacement vessel.”

The Commission invites comment on whether the proposed combining and restatement would cause any substantive change in the meaning of the provisions.

§ 41740. Replacement vessel permit

41740. A transfer may be approved and a permit issued for use of a replacement vessel pursuant to subdivision (j) of Section 41740 under all of the following conditions:

(a) The vessel owner submits a written request for the transfer to the department on a form provided by the department and pays a nonrefundable transfer fee of two hundred dollars (\$200).

(b) The permit for the permitted vessel is current, and the owner of the permitted vessel makes assurances in the application that any renewal of the permit which becomes due during the application processing period will be made.

(c) The owner of the permitted vessel submits evidence with the application sufficient to establish that he or she is the owner of the permitted vessel at the time of the application for the transfer.

(d) The vessel owner submits evidence with the application sufficient, in the judgment of the review board and the department, to establish that the replacement vessel has the same fishing potential as, or less fishing potential than, the permitted vessel.

(e) Under penalty of perjury, the vessel owner signs the application for transfer and certifies that the included information is true to the best of his or her information and belief.

(f) The same transfer has not been requested within the previous 12 months or the same transfer has not previously been denied and that denial is final, unless the application or supporting information are different than that contained in the previous application, as determined by the department and after consultation with the review board.

1 (g) The permittee has 50 percent or greater ownership interest in the permitted
2 vessel and in the replacement vessel. For purposes of this subdivision and
3 subdivision (h), “permittee” means an individual designated as the owner of the
4 permitted vessel.

5 (h) Except as provided in subdivisions (a) through (c) of Section 41755, or
6 paragraph (5) of subdivision (a) of Section 41780, the permittee has maintained a
7 50 percent or greater ownership interest in the permitted vessel for not less than 18
8 months prior to the date of the transfer and the permit for use of the permitted
9 vessel has been maintained for that vessel and has not been previously transferred
10 less than 18 months prior to the date of the transfer.

11 (i) The permittee has written authority from the legal owner, if other than the
12 permittee or mortgager, if any, to transfer the vessel permit from the permitted
13 vessel.

14 (j) The department determines, after consultation with the review board, the
15 following:

16 (1) The replacement vessel has the same fishing potential as, or less fishing
17 potential than, the permitted vessel. The review board and the department shall
18 consider the type of fishery the vessel was previously used in and the vessel’s
19 highest and best use by a prudent operator, and the review board shall make
20 written findings on those facts.

21 (2) The replacement vessel’s fishing potential will not substantially increase
22 fishing capacity over that which resulted from the operation of the permitted
23 vessel.

24 (3) The applicant owns the replacement vessel.

25 (4) The conditions in this chapter are satisfied.

26 **Comment.** Subdivisions (a) through (i) of Section 41740 continue former Fish and Game Code
27 Section 8239 without substantive change.

28 Subdivision (j) continues former Fish and Game Code Section 8241 without substantive
29 change.

30 **§ 41745. Fishing potential classification system for replacement vessels**

31 41745. (a) The department, in consultation with the review board, shall establish
32 and adopt, in the manner prescribed in former Fish and Game Code Section
33 8238.3, a vessel classification system to determine the fishing potential of
34 replacement vessels for applications for transferred permits to be issued pursuant
35 to subdivision (j) of Section 41740, including consideration of how the vessel
36 from which the permit is sought to be transferred was used, the vessel’s highest
37 and best use by a prudent operator, and the fishing potential of prospective vessels
38 for applications for new, original permits.

39 (b) The vessel classification system shall be used by the department in
40 consultation with the review board for issuance of new original vessel permits
41 pursuant to Section 41685 and as a guideline for the review board in making its
42 recommendations to the department on vessel permit transfers.

1 **Comment.** Subdivision (a) of Section 41745 continues former Fish and Game Code Section
2 8238 without substantive change.

3 Subdivision (b) continues former Fish and Game Code Section 8238.1 without substantive
4 change.

5 🔍 **Note.** Existing Fish and Game Code Section 8238 requires the Department of Fish and
6 Wildlife, on or before January 1, 1991, to establish and adopt a specified vessel classification
7 system “in the manner prescribed in Section 8238.3.” However, Section 8238.3 was repealed by
8 its own terms in 1988, operative January 1, 1992. See 1988 Cal. Stat. ch. 1164

9 **The Commission invites comment on how this part of Section 8238 should be continued in**
10 **proposed Section 41745.**

11 **§ 41750. Request for review of vessel before submission of transfer application**

12 41750. Notwithstanding subdivisions (a) through (i) of Section 41740,
13 subdivisions (a) through (c) of Section 41755, or subdivision (b) of Section 41660,
14 any person may request the review board to determine the fishing potential of any
15 permitted vessel or any replacement vessel before a transfer application for a
16 permit for use of a replacement vessel is submitted to the department. The person
17 making a request under this subdivision is not required to be the owner of either
18 vessel. A determination under this subdivision is not binding on the review board
19 or the department and is only advisory.

20 **Comment.** Section 41750 continues former Fish and Game Code Section 8239.9 without
21 substantive change.

22 **§ 41755. Transfer application based on lost, stolen, or destroyed vessel**

23 41755. (a) Unless otherwise prohibited, the department shall accept a transfer
24 application within one year after the date that a permitted vessel was lost, stolen,
25 or destroyed, notwithstanding any inability to physically examine the permitted
26 vessel to determine its salmon fishing potential. Only the permittee at the time of
27 the loss, theft, or destruction of the vessel may apply for the transfer of the vessel
28 permit. Proof that a vessel is lost, stolen, or destroyed shall be in the form of a
29 copy of the report filed with the United States Coast Guard or any other law
30 enforcement agency or fire department investigating the loss.

31 (b) The owner, or the owner’s agent, may request an extension of the time to
32 complete a transfer under subdivision (a) if the application for extension is
33 submitted before the end of the time to submit an application under subdivision
34 (a), or before the end of any previous extensions granted under this subdivision,
35 whichever date is later.

36 (c) The department, after consultation with the review board and for good cause
37 shown, including, but not limited to, inability to find a replacement vessel or
38 pending litigation, may grant an extension of the time to complete a transfer under
39 subdivision (a) for a period of six months. The department may grant further
40 extensions under this subdivision, not to exceed a total time period of five years
41 after the date the permitted vessel was lost, stolen, or destroyed if the permit fees
42 are paid annually as required in paragraph (2) of subdivision (b) of former Fish

1 and Game Code Section 8239, as amended by Chapter 1703 of the Statutes of
2 1990, and paragraph (3) of subdivision (d) of Section 41755.

3 (d) Notwithstanding any other provision of this section, the department shall not
4 issue a permit for use of a replacement vessel if any of the following
5 circumstances exist:

6 (1) The permitted vessel was reported as lost, stolen, or destroyed by fraudulent
7 means, or for fraudulent purposes.


8 (2) The permit application contains or is accompanied with fraudulent or
9 willfully misleading information.

10 (3) The permit for the permitted vessel expires and is not renewed. Except as
11 provided in Section 41725, an owner of a permitted vessel shall renew the permit
12 before the expiration date even if that owner has a transfer application pending.

13 (e) The department may refuse to issue a permit for use of a replacement vessel,
14 or issue a permit to a new owner of a permitted vessel, on any grounds for which a
15 permit may be suspended or revoked.

16 **Comment.** Subdivisions (a) through (c) of Section 41755 continue former Fish and Game
17 Code Section 8239.1 without substantive change.

18 Subdivisions (d) and (e) continue former Fish and Game Code Section 8240 without
19 substantive change.

20  **Note.** Existing Fish and Game Code Section 8239.1(b)(2) (which would be continued by
21 proposed Section 41755(c)) refers to permit fees being paid annually “as required in paragraph
22 (2) of subdivision (b) of Section 8239.” However, that paragraph was in a version of Section 8239
23 that was repealed by its own terms, operative January 1, 1992, in 1990. See 1990 Cal. Stat. ch.
24 1703.

25 **The Commission invites comment on how this part of Section 8239.1 should be continued**
26 **in proposed Section 41755.**

27 **§ 41760. Issuance of replacement vessel permit**

28 41760. Except as otherwise provided in this chapter, the department shall issue a
29 permit, upon payment of the transfer fees pursuant to subdivision (a) of Section
30 41740 and surrender to the department of the permit for the use of the permitted
31 vessel, to the owner of a replacement vessel that is registered with the department
32 pursuant to Section 14755, if the transfer has been approved pursuant to
33 subdivision (j) of Section 41740.

34 **Comment.** Section 41760 continues former Fish and Game Code Section 8233.4 without
35 substantive change.

36 **§ 41765. Term of permit for replacement vehicle**

37 41765. A permit issued for the use of a replacement vessel under subdivision (j)
38 of Section 41740 is valid for the balance of the permit year for which the permit
39 for the use of the permitted vessel was originally issued or last renewed, and the
40 permit issued under this section authorizes the use of the replacement vessel only
41 for that period.

42 **Comment.** Section 41765 continues former Fish and Game Code Section 8239.6 without
43 substantive change.

1 **§ 41770. Revocation of permit based on fraud**

2 41770. The commission, after notice and opportunity for hearing and
3 consultation with the review board, shall revoke a commercial salmon vessel
4 permit issued pursuant to this chapter if the vessel permit was obtained by
5 fraudulent means.

6 **Comment.** Section 41770 continues former Fish and Game Code Section 8246.4 without
7 substantive change.

8 **§ 41775. Appeal of revocation or denial or permit transfer**

9 41775. A person whose commercial salmon fishing vessel permit is revoked by
10 the commission or who has been denied a permit transfer may appeal the
11 revocation or denial to the commission by submitting the appeal in writing to the
12 commission within 60 days of the decision.

13 **Comment.** Section 41775 continues former Fish and Game Code Section 8246.6 without
14 change.

15 **§ 41780. Reversal of revocation order or denial of permit renewal or transfer**

16 41780. (a) The commission shall reverse an order of revocation, order the permit
17 renewed, or order the approval of a permit transfer only if it finds one of the
18 following grounds:

19 (1) The permittee failed to submit an application and pay the fees for renewal on
20 or before April 30 pursuant to Section 41725 and the failure to renew a permit
21 until after the expiration date was due to death, physical illness, mental incapacity,
22 or being called to active military duty, and the person was not reasonably able to
23 have an agent renew the permit.

24 (2) A lienholder of a permitted vessel, if the vessel is the property of the
25 lienholder as a result of foreclosure, surrender, or litigation, can show loss due to
26 the nonrenewal of a permit by the permittee, and the nonrenewal occurred without
27 the knowledge of the lienholder.

28 (3) If, in the case of permit revocation because of fraud, evidence is provided to
29 the commission disputing the charges of fraud. If the commission finds there was
30 no fraud after consideration of all of the evidence, the commission may order the
31 revocation annulled, and, if the permit expiration date has passed during the
32 pendency of the hearing on the appeal, the commission may order the department
33 to renew the permit upon payment of the fees.

34 (4) The denial of the permit transfer was arbitrary or capricious.

35 (5) The denial of the permit transfer was pursuant to subdivision (g) or (h) of
36 Section 41740 and the applicant can show that the 18-month requirement cannot
37 be met due to death, physical illness, mental incapacity, or being called to active
38 military duty.

39 (b) Each appeal shall be heard and considered separately on its own merits.

40 **Comment.** Section 41780 continues former Fish and Game Code Section 8246.7 without
41 substantive change.

1 **§ 41785. Suspension or revocation of commercial salmon fishing privilege**

2 41785. (a) At any time after notice of an order suspending or revoking of a
3 person's commercial salmon fishing privilege is issued by the commission, and
4 before the order of suspension or revocation is final, the commission may, with the
5 agreement of the person subject to the action, compromise or dismiss the action to
6 suspend or revoke the commercial salmon fishing privilege in the best interests of
7 the state, or the commission may compromise or dismiss the action with the
8 agreement of the person subject to the action on terms and conditions, which may
9 include, but are not limited to, the payment of civil damages, the reduction of a
10 revocation to a suspension for a specified period of time, or any other terms and
11 conditions.

12 (b) The commission, after notice and opportunity for hearing and consultation
13 with the review board, may suspend or revoke the commercial fishing privilege,
14 authorized under a license issued for the purposes of Section 14500, for any
15 violation of a term or condition of an agreement to compromise or dismiss a
16 separate suspension or revocation action which was made pursuant to subdivision
17 (a).

18 (c) If the commission orders a suspension or revocation of a person's
19 commercial salmon fishing privilege, any permit issued pursuant to this chapter
20 shall be renewed when the next renewal is due, or the permit shall expire as
21 provided in Section 41755.

22 (d) Civil damages imposed under subdivision (a) of Section 41785 shall be due
23 and payable on or before a date which is 30 days after the compromise is entered
24 into.

25 (e) Subdivision (a) does not apply if an action is brought under Section 8450 to
26 recover civil damages from the person subject to action under this section.

27 **Comment.** Subdivision (a) of Section 41785 continues former Fish and Game Code Section
28 8246(a) without substantive change.

29 Subdivision (b) continues former Fish and Game Code Section 8246(b) without substantive
30 change.

31 Subdivision (c) continues former Fish and Game Code Section 8246(c) without substantive
32 change.

33 Subdivision (d) continues former Fish and Game Code Section 8246.2(b) without substantive
34 change.

35 Subdivision (e) continues former Fish and Game Code Section 8246(d) without substantive
36 change.

37 **Notes.** (1) Existing Fish and Game Code Section 8246(b) (which would be continued by
38 proposed Section 41785(b)) refers to a license issued for the purposes of ... "Section 7852.3."
39 However, Section 7852.3, relating to the issuance of a commercial fishing license to a minor, was
40 repealed in 2003. See 2003 Cal. Stat. ch. 741. As it appears that cross-reference is now obsolete
41 (because any licenses issued pursuant to that repealed section could no longer be in effect),
42 proposed Section 41785(b) would not continue the cross-reference to former Section 7852.3.

43 **The Commission invites comment on whether the discontinuation of that cross-reference**
44 **would cause any problem.**

45 (2) Existing Fish and Game Code Section 8246.2(b) (which would be continued by proposed
46 Section 41785(d)) contains a reference to "[c]ivil damages imposed under subdivision (b) of

Section 8246.” Similarly, existing Fish and Game Code Section 8246(d) (which would be continued by proposed Section 41785(e)) provides that “subdivision (b) [of existing Section 8246] does not apply if an action is brought to recover civil damages” under existing Section 2014. In both cases, the reference to “subdivision (b)” appears to be a drafting error, as it is subdivision (a) of Section 8246, rather than subdivision (b), that relates to civil damages.

Proposed Section 41785(d) and (e) would revise those references to refer to the provision continuing Section 8246(a).


The Commission invites comment on those revisions.

§ 41790. Determination of civil damages following suspension or revocation

41790. The commission, in consultation with the department and the review board, shall adopt regulations for the determination of civil damages provided for in subdivision (a) of Section 41785, which give due consideration to the appropriateness of the civil damages with respect to all of the following factors:

- (a) The gravity of the violation.
- (b) The good faith of the convicted licensee.
- (c) The history of previous violations.
- (d) The damage to the fishery.
- (e) The cost of restoration of the fishery.

Comment. Section 41790 continues former Fish and Game Code Section 8246.2(a) without substantive change.

 **Note.** Existing Fish and Game Code Section 8246.2(a) (which would be continued by proposed Section 41790) contains a reference to “civil damages provided for in subdivision (b) of Section 8246.” However, the reference to “subdivision (b)” appears to be a drafting error, as it is subdivision (a) of Section 8246, rather than subdivision (b), that relates to civil damages.

Proposed Section 41790 would revise that reference to refer to the provision continuing Section 8246(a).

The Commission invites comment on that revision.

§ 41795. Display of permit expiration date

41795. Each permit issued by the department shall display the expiration date on the face of the permit.

Comment. Section 41795 continues the second sentence of former Fish and Game Code Section 8233 without change.

§ 41800. Affixing of commercial fishing salmon stamp

41800. The first commercial fishing salmon stamp issued to an owner, or to that owner’s agent, shall be affixed to the commercial fishing license of that owner or agent. Any additional commercial fishing salmon stamps issued to the owner or the owner’s agent pursuant to subdivision (a) of Section 41675 for purposes of obtaining permits for use of additional commercial salmon fishing vessels shall be affixed to each additional vessel’s registration issued pursuant to Section 14755.

Comment. Section 41800 continues former Fish and Game Code Section 8234(b) without substantive change.

Article 2. Commercial Salmon Fishing Review Board

§ 41900. Creation of board

41900. There is in the department a commercial salmon fishing review board, which consists of five voting members appointed by the director.

Comment. Section 41900 continues the first sentence of former Fish and Game Code Section 8247 without change.

§ 41905. Legislative declaration

41905. The Legislature declares that individuals appointed as members of the review board shall be chosen from the commercial salmon fishing industry in order to represent and further the interest of the industry and commercial salmon fishing vessel owners, and this representation serves the general public interest.

Comment. Section 41905 continues former Fish and Game Code Section 8247.5(a) without change.

§ 41910. Adoption of regulations by director

41910. The director may adopt standards and criteria by regulation that shall be applied by the review board in carrying out its activities under this chapter.

Comment. Section 41910 continues former Fish and Game Code Section 8247.7 without substantive change.

§ 41915. Composition of board

41915. (a) Three of the voting members of the review board shall be owners of permitted vessels appointed by the director from lists submitted by associations or groups representing commercial salmon fishing vessel owners.

(b) Two of the voting members of the review board shall be owners of permitted vessels appointed by the director from lists submitted by individual commercial salmon fishing vessel owners.

(c) Any voting member of the review board may appoint an alternate member to represent him or her at any meeting of the review board. The director may, within 60 days of the appointment, refuse an alternate member. The alternate shall serve at the pleasure of the member who appointed him or her and shall have all the powers and duties of a member of the commercial salmon fishing review board, except that the alternate shall only participate and vote in meetings in the absence of the member who appointed him or her.

Comment. Section 41915 continues former Fish and Game Code Section 8247.1 without change.

§ 41920. Exemption of board members

41920. Each member of the review board is exempt from Section 87100 of the Government Code, unless the result of his or her actions taken as board members has a material financial effect on him or her distinguishable from its effect on other members of the commercial salmon fishing industry generally.

1 **Comment.** Section 41920 former Fish and Game Code Section 8247.5(b) without change.

2 **§ 41925. Member terms**

3 41925. The terms of the members of the review board shall be for staggered four
4 year terms.

5 **Comment.** Section 41925 continues the first sentence of former Fish and Game Code Section
6 8247.2 without change.

7 **§ 41930. Removal of board member**

8 41930. The director may remove a member of the review board for cause.

9 **Comment.** Section 41930 continues the third sentence of former Fish and Game Code Section
10 8247 without change.

11 **§ 41935. Member compensation**

12 41935. (a) Necessary and proper expenses shall be paid to review board
13 members.

14 (b) Each member, or any alternate member participating on behalf of a regular
15 member in that member's absence, shall receive one hundred dollars (\$100) per
16 day, for each day of attendance and participation in meetings of the review board.

17 **Comment.** Section 41935 continues the second and third sentences of former Fish and Game
18 Code Section 8247.2 without substantive change.

19 **§ 41940. Meeting attendance by director or designee**

20 41940. The director or a designee of the director shall attend meetings of the
21 review board as a nonvoting member.

22 **Comment.** Section 41940 continues the second sentence of former Fish and Game Code
23 Section 8247 without change.

24 **§ 41945. Function of board**

25 41945. (a) The review board shall function as an advisory body to the
26 department regarding implementation of the provisions of this chapter.

27 (b) The review board shall act by a majority vote of the members present and
28 voting. The review board shall not act unless there is a quorum of the voting
29 members, including alternate members in the absence of their appointing
30 members, and the director or his or her designee if present.

31 **Comment.** Section 41945 continues former Fish and Game Code Section 8247.4 without
32 substantive change.

33 **§ 41950. Duties of review board**

34 41950. The review board shall do all of the following:

35 (a) Consider and make recommendations to the department on requests for
36 permit transfers.

37 (b) Recommend to the department, the number and classification of new vessel
38 permits to be issued annually, if any, pursuant to Section 41685.

1 (c) Consult with and advise the commission as required by Sections 41770,
2 41785, and 41790.

3 (d) Consult with the department and advise on the establishment of the vessel
4 classification system pursuant to subdivision (a) of Section 41745.

5 **Comment.** Section 41950 continues former Fish and Game Code Section 8247.8 without
6 substantive change.

7 **§ 41955. Obligation of board members**

8 41955. Members and alternate members of the review board shall act in the best
9 interest of the state, the department, and the commercial salmon fishing industry.
10 As members of the review board, no member or alternate member shall take any
11 action, because of his or her position, that results in a direct material effect on any
12 of them, distinguishable from its effect on other members of the commercial
13 salmon fishing industry.

14 **Comment.** Section 41955 continues former Fish and Game Code Section 8247.6 without
15 change.

16 CHAPTER 6. SALMON MANAGEMENT

17 **§ 42050. Department consultation**

18 42050. (a) The department shall consult with the advisory committee and
19 representatives of every user group known to the department on the progress being
20 made in the development of the annual and long-term salmon management plans.

21 (b) For purposes of this section, “advisory committee” means the Advisory
22 Committee on Salmon and Steelhead Trout, established pursuant to Resolution
23 Chapter 141 of the Statutes of 1983, except that there shall be two additional
24 members appointed by the Joint Committee on Fisheries and Aquaculture after
25 consultation with the Director of Fish and Game and the Fish and Game
26 Commission.

27 **Comment.** Subdivision (a) of Section 42050 continues former Fish and Game Code Section
28 7662 without change.

29 Subdivision (b) continues former Fish and Game Code Section 7660 without substantive
30 change.

31 CHAPTER 7. MISCELLANEOUS PROVISIONS

32 **§ 42100. Take from commercial passenger fishing boat**

33 42100. (a) If a commercial passenger fishing boat is used to take salmon or has
34 salmon aboard, in ocean waters north of Point Arguello, there shall be on board
35 that vessel a total number of commercial fishing salmon stamps sufficient to have
36 at least one for the operator and one for each crewmember required by United
37 States Coast Guard regulations, excepting an operator or a crewmember who is
38 exempt from the commercial fishing salmon stamp requirement of subdivision (b)
39 of Section 41355. The commercial fishing salmon stamps shall be affixed to either

the commercial fishing licenses of the operator and the crewmembers or, pursuant to subdivision (b), to the commercial passenger fishing license. No person shall operate, or cause to be operated, a commercial passenger fishing boat in violation of this subdivision. Vessels permitted as commercial salmon fishing vessels pursuant to Section 41675 are exempt from the requirements of this subdivision.

(b) Notwithstanding Section 2930, the department may issue to the owner or operator of a vessel licensed pursuant to this chapter, upon application and payment of the fees prescribed in subdivision (c) of Section 41355, one commercial fishing salmon stamp for the operator and not more than one additional commercial salmon stamp for each crewmember required by the United States Coast Guard regulations. The commercial fishing salmon stamps issued under this subdivision shall be affixed to the vessel's commercial passenger fishing boat license issued pursuant to this chapter.

Comment. Section 42100 continues former Fish and Game Code Section 7925 without substantive change.

Notes. (1) Existing Fish and Game Code Section 7925(a) (which would be continued by proposed Section 42100(a)) requires there to be on board a described vessel commercial fishing salmon stamps sufficient for the operator and each crewmember, excepting an operator or a crewmember who is exempt from the similar requirement stated in "subdivision (b) of Section 7860." However, the reference to "subdivision (b) of Section 7860" is ambiguous, as that subdivision cross-references other subdivisions in Section 7860 that also contain exemptions from the commercial fishing salmon stamp requirement:

"(b) Except as provided in subdivision (f) or (g), the operator of a vessel on which salmon are taken for commercial purposes shall not permit a person on board that vessel while salmon are being taken or transported unless that person was less than 18 years of age or 70 years of age or more on April 1 of the current license year or that person has a commercial fishing salmon stamp affixed to the person's commercial fishing license.

....
(f) Notwithstanding subdivision (a), one crewmember of a vessel for which a commercial fishing salmon stamp is issued pursuant to subdivision (e) may be aboard that vessel and take salmon for commercial purposes as a crewmember on that vessel without obtaining a commercial fishing salmon stamp under the following conditions:

(1) The crewmember is designated by name and commercial fishing license number on a form furnished by the department before salmon are taken on the vessel when that crewmember is aboard.

(2) The crewmember has a valid commercial fishing license issued under Section 7850.

(3) The commercial fishing salmon stamp for the crewmember is affixed to the form prescribed in paragraph (1) on which the vessel registration number of the vessel is entered and on which the crewmember who is exempted by this subdivision is designated by the last entered name and commercial fishing license number.

(g) Persons who are exempt from the license requirements, or who are not required to be licensed, pursuant to Section 7850, are exempt from the requirements of this section."

The Commission reads the exemption in existing Section 7925(a) as intended to apply to all persons exempted from the stamp requirement under any subdivision of Section 7860, and proposed Section 42100(a) would therefore revise the exemption in existing Section 7925(a) to refer to operators and crewmembers exempted from the commercial fishing salmon stamp requirement of "Section 7860."

The Commission invites comment on whether this revision changes the intended meaning of existing Section 7925.

(2) Existing Section 7149.05(a)(4) cross-refers to existing Section 1053 of the existing code, a section that was repealed by 2015 Cal. Stat. ch. 683. Section 1053 generally prohibited obtaining more than one paper hunting license – a form of license that is now obsolete – for the same license year, except under specified conditions. As a substantially similar prohibition applicable to electronic hunting licenses appears in existing Section 1053.1, proposed Section 42100 cross-refers to the section of the proposed law that continues existing Section 1053.1.

The Commission seeks comment on whether that revision is appropriate.

§ 42105. Use of landing tax

42105. All moneys received as a landing tax from persons who receive salmon from fishermen under the provisions of Title 10 (commencing with Section 20900) of Part 6 of Division 6 shall be used only for the purpose of propagating salmon.

Comment. Section 42105 continues former Fish and Game Code Section 8055 without substantive change.

§ 42110. Missing adipose fin

42110. (a) Notwithstanding any measurement requirements under this code, and to implement the department's salmon tagging program, any person in possession of a salmon with a missing adipose fin, the small, fleshy fin on the back of the fish between the back fin and the tail, upon request by an authorized agent or employee of the department, shall immediately relinquish the head of the salmon to the state, at no charge, for recovery of any coded-wire tag. The head may be removed by the fish owner or, if removed by the official department representative, the head shall be removed in a manner to minimize loss of salmon flesh and the salmon shall immediately be returned to the rightful owner.

(b) It is unlawful to intentionally conceal, cull, or release into the waters, a salmon with a missing adipose fin that is otherwise legal to possess.

Comment. Section 42110 continues former Fish and Game Code Section 8226 without substantive change.

PART 18. SARDINES

TITLE 1. SARDINES GENERALLY

§ 42200. Provisions not exclusive

42200. The provisions of this part are not intended to be exclusive. Other provisions that govern sardines include, but are not limited to, the following provisions:

(a) Section 15915.

(b) Section 16475.

(c) Section 20710.

(d) Section 21015.

(e) Section 21620.

(f) **Section 10660.**

1 **Comment.** Section 42200 is new. It is added for drafting convenience.

2 **TITLE 2. COMMERCIAL PROVISIONS**

3 **CHAPTER 1. GENERAL PROVISIONS**

4 **§ 42250. Application of title**

5 42250. For purposes of Section 37805, the provisions in this title are commercial
6 provisions.

7 **Comment.** Section 42250 is new. It is added for drafting convenience.

8 **§ 42255. Declaration of legislative intent**

9 42255. It is the intent of the Legislature that the sardine resource be managed
10 with the objective of maximizing the sustained harvest.

11 **Comment.** Section 42255 continues the first sentence of former Fish and Game Code Section
12 8150.7 without change.

13 **§ 42260. Conformity with federal fishery regulations**

14 42260. The department shall manage the sardine resource in conformance with
15 the federal fishery regulations as recommended by the Pacific Fishery
16 Management Council and as adopted by the Secretary of Commerce.

17 **Comment.** Section 42260 continues the second sentence of former Fish and Game Code
18 Section 8150.7 without change.

19 **§ 42265. Take or possession**

20 42265. (a) Sardines may not be taken or possessed on any boat, barge, or vessel
21 except pursuant to Sections 42255 and 42560.

22 (b) This section does not prohibit the possession or use of sardines imported into
23 this state under a bill of lading identifying the country of origin.

24 (c) Imported sardines may be used for dead bait under regulations adopted by
25 the commission.

26 **Comment.** Section 42265 continues former Fish and Game Code Section 8150.5 without
27 substantive change.

28 **§ 42270. Revocation or suspension of license**

29 42270. (a) In addition to any other applicable penalty, the commercial fishing
30 license of the master of a vessel may be revoked or suspended by the commission,
31 when requested by the department, for a period not to exceed one year, upon the
32 second conviction in three years of the master or the master's agent, servant,
33 employee, or any other person acting under the master's direction or control, for a
34 violation of any provision of this article.

35 (b) A master's license shall not be revoked unless both the first and second
36 convictions are for a violation by the master or a violation occurring when the

1 person convicted was acting as the master's agent, servant, employee, or acting
2 under the master's direction or control.

3 **Comment.** Section 42270 restates the part of former Fish and Game Code Section 12002.8(d)
4 and (e) applicable to the provisions of this article, without substantive change.

5 **Note.** Proposed Section 42270(a) is intended to restate the part of existing Fish and Game
6 Code Section 12002.8(d) applicable to this article, to clarify the meaning of that existing
7 provision without changing its substantive effect. The existing provision begins as follows, with
8 the restated language italicized:

9 "Notwithstanding *Sections 12000, 12001, and 12002*, the commercial fishing license of the
10 master of a vessel may be revoked or suspended by the commission, when requested by the
11 department...."

12 **The Commission invites comment on whether the restatement of the italicized language in**
13 **proposed Section 42270(a) would cause any substantive change in the meaning of the**
14 **provision.**

15 CHAPTER 2. MISCELLANEOUS PROVISIONS

16 § 42350. Unloading for use in cannery

17 42350. (a) No sardines intended for or used in any cannery shall be unloaded
18 from any vessel, except at a weighing or measuring device approved by the
19 Bureau of Weights and Measures.

20 (b) Those sardines shall be weighed by a public weighmaster licensed as an
21 individual under the laws of this state, and a receipt as to that weight shall be
22 immediately issued by the weighmaster to the commercial fisherman at the time of
23 receipt of the products.

24 (c) Copies of the receipt shall be handled in the manner provided in Chapter 3
25 (commencing with Section 21000) and Chapter 4 (commencing with Section
26 21200) of Title 10 of Part 4 of Division 6.

27 **Comment.** Section 42350 continues the part of former Fish and Game Code Section 7702.1
28 applicable to sardines without substantive change.

29 § 42355. Compliance with use stated on landing receipt

30 42355. No person shall receive, possess, or sell sardines for any purpose except
31 for that purpose specified on the fish receipt completed at the time of landing of
32 those sardines pursuant to Section 42355.

33 **Comment.** Section 42355 continues former Fish and Game Code Section 8154 without
34 substantive change.

35 PART 19. SHAD

1 TITLE 1. SHAD GENERALLY

2 § 42450. Provisions not exclusive

3 42450. The provisions of this part are not intended to be exclusive. Other
4 provisions that govern shad include, but are not limited to, the following
5 provisions:

6 (a) Section 13900.

7 (b) Section 20100.

8 (c) Section 15540.

9 **Comment.** Section 42450 is new. It is added for drafting convenience.

10 § 42455. Importation of shad

11 42455. (a) Shad legally taken in another state that permits the sale of that fish
12 may be imported into this state under regulations of the commission.

13 (b) Before the commission adopts any regulation pursuant to this section, a
14 public hearing shall be held in the San Francisco or Sacramento area.

15 **Comment.** Section 42455 continues the part of former Fish and Game Code Section 2363
16 applicable to shad without change.

17 TITLE 2. COMMERCIAL PROVISIONS

18 § 42500. Application of title

19 42500. For purposes of Section 37805, the provisions in this title are commercial
20 provisions.

21 **Comment.** Section 42500 is new. It is added for drafting convenience.

22 § 42505. Take with purse or round haul net

23 42505. Shad may not be taken with a purse or round haul net.

24 **Comment.** Section 42505 continues the part of former Fish and Game Code Section 8756
25 applicable to shad without substantive change.

26 PART 20. SHARKS

27 TITLE 1. SHARKS GENERALLY

28 § 42600. Provisions not exclusive

29 42600. The provisions of this part are not intended to be exclusive. Other
30 provisions that govern sharks include, but are not limited to, the following
31 provisions:

32 (a) Section 12165.

33 (b) Section 17005.

34 (c) Section 18815.

- 1 (d) Section 18820.
2 (e) Section 18825.
3 (f) Chapter 7 (commencing with Section 18300) of Title 4 of Part 6 of Division
4 6.
5 (g) Section 19810.
6 (h) Section 20710.
7 (i) Section 20720.
8 (j) Section 21360.
9 (k) Section 40115.
10 (l) Section 43655.
11 **Comment.** Section 42600 is new. It is added for drafting convenience.

12 **§ 42605. Take generally**

13 42605. It is unlawful to take any white shark (*Carcharodon carcharias*), except
14 under permits issued pursuant to Section 9200 for scientific or educational
15 purposes.

16 **Comment.** Section 42605 continues former Fish and Game Code Section 5517 without
17 substantive change.

18 **§ 42610. Shark fins**

19 42610. (a) As used in this section, “shark fin” means the raw, dried, or otherwise
20 processed detached fin, or the raw, dried, or otherwise processed detached tail, of
21 an elasmobranch.

22 (b) Except as otherwise provided in this section, it shall be unlawful for any
23 person to possess, sell, offer for sale, trade, or distribute a shark fin.

24 (c) Any person who holds a license or permit pursuant to Section 9200 may
25 possess a shark fin or fins consistent with that license or permit.

26 (d) Any person who holds a license or permit issued by the department to take or
27 land sharks for recreational or commercial purposes may possess a shark fin or
28 fins consistent with that license or permit.

29 (e) Any person who holds a license or permit issued by the department to take or
30 land sharks for recreational or commercial purposes may possess, including for
31 purposes of consumption or taxidermy, or may donate to a person licensed or
32 permitted pursuant to Section 9200, a shark fin or fins consistent with that license
33 or permit.

34 (f) Nothing in this section prohibits the sale or possession of a shark carcass,
35 skin, or fin for taxidermy purposes pursuant to Section 10830.

36 **Comment.** Subdivisions (a) through (d) of Section 42610 continue former Fish and Game
37 Code Section 2021 without substantive change. Subdivision (e) of former Fish and Game Code
38 Section 2021 is obsolete and is not continued.

39 Subdivisions (e) and (f) continue former Fish and Game Code Section 2021.5(a) without
40 substantive change. Subdivision (a)(2) of former Fish and Game Code Section 2021.5 is obsolete
41 and is not continued.

1 **§ 42615. Report by Ocean Protection Council**

2 42615. (a) The Ocean Protection Council shall submit an annual report to the
3 Legislature that lists any shark species that have been independently certified to
4 meet internationally accepted standards for sustainable seafood, as defined in
5 Section 35550 of the Public Resources Code, and adopted by the Ocean Protection
6 Council pursuant to Section 35617 of the Public Resources Code, including chain
7 of custody standards.

8 (b) The report required by subdivision (a) shall be submitted in compliance with
9 Section 9795 of the Government Code.

10 **Comment.** Section 42615 continues former Fish and Game Code Section 2021.5(b) without
11 substantive change.

12 **TITLE 2. COMMERCIAL PROVISIONS**

13 **CHAPTER 1. PRELIMINARY PROVISIONS**

14 **§ 42700. Application of title**

15 42700. For purposes of Section 37805, the provisions in this title are commercial
16 provisions.

17 **Comment.** Section 42700 is new. It is added for drafting convenience.

18 **CHAPTER 2. SHARK PARTS**

19 **§ 42750. Shark fin or tail**

20 42750. (a) Except as permitted by this code or by regulation of the commission,
21 it is unlawful to sell, purchase, deliver for a commercial purpose, or possess on a
22 commercial fishing vessel registered pursuant to Section 14755, a shark fin or tail
23 or part of a shark fin or tail that has been removed from the carcass.

24 (b) A thresher shark fin or tail that has been removed from the carcass and
25 whose original shape remains unaltered may be possessed on a registered
26 commercial fishing vessel, if the carcass corresponding to the fin or tail is also
27 possessed.

28 **Comment.** Section 42750 continues former Fish and Game Code Section 7704(c) without
29 substantive change.

30 **CHAPTER 3. ANGEL SHARKS**

31 **§ 42800. Measurement**

32 42800. (a) Angel shark total length shall be measured from the anterior end of
33 the head to the tip of the tail while the fish is lying in a position of natural repose.

34 (b) Angel shark alternate length shall be measured from the point where the
35 leading edge of the first dorsal fin meets the back to the tip of the tail.

(c) When measuring total length or alternate length, the tip of the tail may be laid flat against the surface of the measuring device.

(d) Angel sharks may be constrained from lateral movement during measurement by restraining devices approved by the department.

Comment. Section 42800 continues former Fish and Game Code Section 8388(b) without substantive change.

§ 42805. Size restrictions

42805. (a) No female angel shark measuring less than 42 inches in total length or 15 1/4 inches in alternate length, and no male angel shark measuring less than 40 inches in total length or 14 1/2 inches in alternate length, may be possessed, sold, or purchased.

(b) Notwithstanding subdivision (a), ten percent of the angel sharks in any load may measure not more than 1/2 inch less than the minimum sizes specified in this section.

Comment. Section 42805 continues former Fish and Game Code Section 8388(a) without substantive change.

§ 42810. Take in gill or trammel net

42810. (a) An angel shark taken in a gill or trammel net shall be landed (brought ashore) with at least one intact pelvic fin and the tail fin attached.

(b) An angel shark taken in a gill or trammel net shall not be transferred to or from another vessel, except that an angel shark may be transferred to or from a vessel with a department observer on board. An observer shall observe and make a written record of that transfer.

Comment. Subdivision (a) of Section 42810 continues former Fish and Game Code Section 8388(c) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 8388(d) without substantive change.

CHAPTER 4. BASKING SHARKS

§ 42850. Regulation

42850. (a) The commission may adopt regulations to manage basking sharks.

(b) A basking shark may not be taken commercially, unless the commission adopts regulations for that activity and the taking is in accordance with those regulations.

Comment. Section 42850 continues former Fish and Game Code Section 8599.4 without substantive change.

CHAPTER 5. LEOPARD SHARKS

§ 42900. Groundfish

42900. For the purposes of this code, a leopard shark is a groundfish.

4 **The Commission invites comment on whether that classification is correct.**

6 42905. (a) A person shall not take, possess, sell, or purchase, for a commercial
7 purpose, any leopard shark less than 36 inches in total length.

13 **Comment.** Section 42905 continues former Fish and Game Code Section 8388.5 without
14 substantive change.

16 **§ 42950. Take for commercial purpose**

(b) Notwithstanding subdivision (a), a white shark may be taken incidentally in a commercial fishing operation using set gill nets, drift gill nets, or roundhaul nets. White shark taken pursuant to this subdivision shall not have the pelvic fin severed from the carcass, until after the white shark is brought ashore. White shark taken pursuant to this subdivision, if landed alive, may be sold for scientific or live display purposes.

29 **Comment.** Section 42950 continues former Fish and Game Code Section 8599 without
30 substantive change.

42955. The department shall cooperate, to the extent that it determines feasible,
with appropriate scientific institutions, to facilitate data collection on white sharks
taken incidentally by commercial fishing operations.

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PART 21. STURGEON

TITLE 1. STURGEON GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 43100. Provisions not exclusive

43100. The provisions of this part are not intended to be exclusive. Other provisions that govern sturgeon include, but are not limited to, the following provisions:

- (a) Section 13900.
- (b) Section 14875.
- (c) Section 15540
- (d) Section 23905.
- (e) **Section 7155.**

Comment. Section 43100 is new. It is added for drafting convenience.

CHAPTER 2. TAKE, POSSESSION, OR SALE

§ 43150. Take or possession

43150. (a) It is unlawful to take or possess for a commercial purpose, buy or sell, or offer to buy or sell, a whole sturgeon, or part of a sturgeon, including, but not limited to, its eggs, except as follows:

(1) A sturgeon, part of a sturgeon, or sturgeon eggs, taken or possessed by, and the cultured progeny of, an aquaculturist who is registered under Section 23605, may be bought or sold subject to regulations of the commission.

(2) A sturgeon, part of a sturgeon, or sturgeon eggs, taken commercially in another state that permits the sale of sturgeon, and lawfully imported under Section 43200, may be possessed, bought, or sold.

(3) Sturgeon, or part of a sturgeon, taken pursuant to a sport fishing license, which is processed in accordance with Section 13700.

(b) For purposes of this section, it is prima facie evidence that a sturgeon or part of a sturgeon is possessed for a commercial purpose, if the possession is of more than two times the sport bag limit.

(c) Notwithstanding Section 4400 or subdivision (a) of Section 8400, the punishment for a violation of this section is a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), imprisonment in a county jail not to exceed one year, or both that fine and imprisonment.

(d) The court shall also permanently revoke any commercial fishing license or commercial fishing permit, and may permanently revoke any sport fishing license issued to the violator by the department.

(e) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense subject to this section may be seized and may be ordered forfeited by the court pursuant to subdivision (c) of Section 8630.

(f) Fifty percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

Comment. Subdivisions (a) and (b) of Section 43150 continue former Fish and Game Code Section 7370 without substantive change.

Subdivision (c) continues former Fish and Game Code Section 12006(a)(1) without substantive change.

Subdivision (d) through (f) continue the part of former Fish and Game Code Section 12006(b) applicable to a violation of former Fish and Game Code Section 7370 without substantive change.

CHAPTER 3. IMPORTATION

§ 43200. Importation of sturgeon

43200. (a) Sturgeon legally taken in another state that permits the sale of that fish may be imported into this state under regulations of the commission.

(b) Before the commission adopts any regulation pursuant to this section, a public hearing shall be held in the San Francisco or Sacramento area.

Comment. Section 43200 continues the part of former Fish and Game Code Section 2363 applicable to sturgeon without change.


CHAPTER 4. STURGEON EGG PROCESSING

§ 43250. Required license

43250. (a) Every person engaged in the business of canning, curing, preserving, packing, or otherwise processing, or dealing at wholesale in, the eggs of sturgeon for human consumption, shall obtain a sturgeon egg processing license from the department for that purpose. The license required by this title is in addition to any other license, permit, or other authorization required by this code or by any other provision of law.

(b) Possession of a sturgeon egg processing license issued pursuant to this title authorizes the licensee to can, cure, preserve, pack, or otherwise process, or deal at wholesale in, the eggs of sturgeon if, and only if, the eggs are lawfully taken or lawfully possessed pursuant to Section 13700 or 43150.

Comment. Section 43250 continues former Fish and Game Code Section 10000 without substantive change.

 **Note.** Existing Fish and Game Code Section 10000(b) (which would be continued by proposed Section 43250(b)) authorizes specified conduct relating to sturgeon eggs “if, and only if, the eggs are lawfully taken or lawfully possessed pursuant to Section 7230 or 8371.” However, in 2007 language in existing Fish and Game Code Section 8371 relating to the taking or possession of “sturgeon, or parts thereof,” was deleted from that section, and added to existing Fish and Game Code Section 7370. See 2007 Cal. Stat. ch. 328. Proposed Section 43250 would

1 therefore revise the cross-reference in existing Section 10000 to “Section 8371” to refer to the
2 section in the proposed law that would continue existing Section 7370.

3 **The Commission invites comment on how proposed Section 43250 should continue the**
4 **reference to existing Fish and Game Code Section 8371 in existing Section 10000.**

5 **§ 43255. License fee**

6 43255. A sturgeon egg processing license shall be issued and delivered upon
7 application and the payment to the department of a base fee of one hundred dollars
8 (\$100), adjusted under Section 3755. The license shall be valid for a period of 12
9 months from the date of issuance.

10 **Comment.** Section 43255 continues the first sentence of former Fish and Game Code Section
11 10001 without substantive change.

12 **§ 43260. License term**

13 43260. A sturgeon egg processing license shall be issued and delivered upon
14 application and the payment to the department of a base fee of one hundred dollars
15 (\$100), as adjusted under Section 3755. The license shall be valid for a period of
16 12 months from the date of issuance.

17 **Comment.** Section 43260 continues the second sentence of former Fish and Game Code
18 Section 10001 without substantive change.

19 **§ 43265. Required documentation**

20 43265. Every person licensed pursuant to this chapter shall make a true and
21 legible record of each transaction involving the eggs of sturgeon. This
22 documentation shall show all of the following:

- 23 (a) The weight of the eggs received.
- 24 (b) The name and address of the person from whom the eggs were received.
- 25 (c) If the eggs were obtained from a sturgeon that was artificially propagated by
26 a person other than the licensee, the name and address of that person.
- 27 (d) If the eggs were obtained from a sturgeon that was not taken by the licensee,
28 the name and address of the person from whom the licensee obtained the sturgeon
29 from which the eggs were obtained.
- 30 (e) The date of receipt.
- 31 (f) If imported into this state, the place where the sturgeon were taken.
- 32 (g) Whether the eggs are to be processed by the recipient or sold by him or her
33 to another for processing, and, if the eggs are to be sold for processing by another,
34 the name and address of that person.
- 35 (h) Any other information that the department may require and specify on any
36 form provided.

37 **Comment.** Section 43265 restates former Fish and Game Code Section 10002 without
38 substantive change.

1 **Note.** Proposed Section 43265(b)-(d) is intended to restate existing Fish and Game Code
2 Section 10002(b) to clarify the meaning of that provision, without changing its substantive effect.
3 The existing provision reads as follows:

4 “10002. Every person licensed pursuant to this division shall make a true and legible record of
5 each transaction involving the eggs of sturgeon. This documentation shall show all of the
6 following:

7

8 (b) The name and address of the person from whom the eggs were received, and, if different,
9 the name and address of the person who artificially propagated the sturgeon from which the eggs
10 were obtained or the name and address of the person from whom the sturgeon were received from
11 which the eggs were obtained.”

12 **The Commission invites comment on whether the restatement would cause any**
13 **substantive change in the meaning of the provision.**

14 **§ 43270. Retention and inspection of documentation**

15 43270. (a) The documentation required by Section 43265 shall be kept by the
16 person or business holding the sturgeon egg processing license for a period of two
17 years from the date of receipt of eggs, and shall be available for inspection during
18 normal business hours by the department.

19 (b) Any information received or requested by the department shall be
20 confidential, and the records shall not be public records, except that the
21 information contained in the records may be compiled and published as summaries
22 in a manner that will not disclose the individual record or business of any person.

23 Comment. Subdivision (a) of Section 43270 continues former Fish and Game Code Section
24 10003 without substantive change.

25 Subdivision (b) continues former Fish and Game Code Section 10004 without change.

26 **§ 43275. Punishment for violation**

27 43275. (a) Any person convicted of a violation of a provision of this chapter, or
28 a violation of any other provision of this code or any regulation adopted pursuant
29 to this code relating to sturgeon, shall be prohibited from engaging in the business
30 of canning, curing, preserving, packing, or otherwise processing, or dealing at
31 wholesale or retail in the eggs of sturgeon in this state, for one year from the date
32 of the conviction.

33 (b) Any person convicted of a second or subsequent violation of a provision of
34 this chapter, or a violation of any other provision of this code or any regulation
35 adopted pursuant to this code relating to sturgeon, within five years of another
36 offense resulting in a conviction of a violation of any of those provisions, is
37 prohibited from engaging in any activity for which a sturgeon egg processing
38 license is required, for five years from the date of the last conviction.

39 (c) The commission shall revoke any license issued pursuant to this chapter to a
40 person who is prohibited from engaging in that business under this section. No
41 sturgeon egg processing license revoked pursuant to this section shall be issued,
42 reissued, or reinstated during the period of prohibition prescribed in this section.

(d) It is unlawful for any person to obtain, or attempt to obtain, a sturgeon egg processing license pursuant to this chapter during the period of prohibition prescribed in this section.

Comment. Section 43275 continues former Fish and Game Code Section 10005 without substantive change.

TITLE 2. COMMERCIAL PROVISIONS

§ 43350. Application of title

43350. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 43350 is new. It is added for drafting convenience.

§ 43355. Required return to water if caught in net

43355. (a) Any sturgeon that is taken in any type of net shall, regardless of its condition, be immediately freed and removed from the net by the fisherman, and immediately returned to the water without further harm.

(b) A commercial fisherman shall not have any sturgeon, whether dead or alive, in his or her possession, at any time when conducting netting operations or when going to or from those operations, except when releasing a sturgeon from a net.

(c) The return of sturgeon to the water pursuant to this section is not deterioration, waste, or spoilage of fish for purposes of Section 14310.

Comment. Section 43355 continues the part of former Fish and Game Code Section 8370 applicable to sturgeon without substantive change.

PART 22. SURFPERCH

TITLE 1. SURFPERCH GENERALLY

§ 43500. Provisions not exclusive

43500. The provisions of this part are not intended to be exclusive. Other provisions that govern surfperch include, but are not limited to, the following provisions:

(a) **Section 10664.**

(b) **Section 10666.**

(c) **Section 10667.**

Comment. Section 43500 is new. It is added for drafting convenience.

1 TITLE 2. COMMERCIAL PROVISIONS

2 § 43550. Application of title

3 43550. For purposes of Section 37805, the provisions in this title are commercial
4 provisions.

5 **Comment.** Section 43550 is new. It is added for drafting convenience.

6 § 43555. Take

7 43555. (a) Upon the recommendation of the director regarding management
8 measures for surfperch of the family Embiotocidae, the commission may adopt
9 regulations to manage the commercial surfperch resource and fisheries consistent
10 with Title 3 (commencing with Section 12100) of Part 4 of Division 4, including,
11 but not limited to, adoption of changes to the prohibitions imposed under
12 subdivision (b).

13 (b) Except as may be authorized under subdivision (a), surfperch of the family
14 Embiotocidae may be taken only between July 16 and April 30, except shiner
15 surfperch (*Cymatogaster aggregata*), which may be taken, sold, or purchased at
16 any time. Surfperch may be sold or purchased only between July 16 and May 10,
17 except as may be authorized under subdivision (a). South of a line drawn east and
18 west through Point Arguello, barred surfperch, redbait surfperch, and calico
19 surfperch may not be taken for a commercial purpose, except as may be authorized
20 under subdivision (a). Surfperch of these three species that have been taken north
21 of the line during the open season and shipped south of the line may be sold or
22 purchased under regulations that the commission may adopt.

23 **Comment.** Section 43555 continues former Fish and Game Code Section 8395 without
24 substantive change.

25 PART 23. SWORDFISH

26 TITLE 1. SWORDFISH GENERALLY

27 § 43600. Provisions not exclusive

28 43600. The provisions of this part are not intended to be exclusive. Other
29 provisions that govern swordfish include, but are not limited to, the following
30 provisions:

31 (a) Section 18030.

32 (b) Chapter 7 (commencing with Section 18300) of Title 4 of Part 6 of Division
33 6.

34 (c) Chapter 2 (commencing with Section 18800) of Title 5 of Part 6 of Division
35 6.

36 (d) Section 21950.

37 **Comment.** Section 43600 is new. It is added for drafting convenience.

1 TITLE 2. COMMERCIAL PROVISIONS

2 § 43650. Application of title

3 43650. For purposes of Section 37805, the provisions in this title are commercial
4 provisions.

5 **Comment.** Section 43650 is new. It is added for drafting convenience.


6 § 43655. Permit requirement

7 43655. (a) A swordfish shall not be taken, possessed aboard a boat, or landed by
8 a person, for commercial purposes, except under a valid swordfish permit. If more
9 than one person is aboard the boat, at least one person shall have a swordfish
10 permit issued to that person that has not been revoked or suspended, subject to
11 regulations adopted by the commission.

12 (b) The fee for a permit issued pursuant to subdivision (a) is three hundred thirty
13 dollars (\$330). This permit fee does not apply to the holder of a valid drift gill net
14 shark and swordfish permit required under Chapter 7 (commencing with Section
15 18300) of Title 4 of Part 6 of Division 6.

16 **Comment.** Subdivision (a) Section 43655 continues former Fish and Game Code Section 8394
17 without change.

18 Subdivision (b) continues former Fish and Game Code Section 8394.5 without substantive
19 change.

20  Note. The second sentence of existing Fish and Game Code Section 8394 (which would be
21 continued by the second sentence of proposed Section 43655(a)) requires a specified person to
22 have a swordfish permit that has not been revoked or suspended, “subject to regulations adopted
23 by the commission.” Is the quoted language meant to describe the basis for the referenced
24 revocation or suspension (i.e., “revoked or suspended *pursuant to* regulations adopted by the
25 Commission”), or is the quoted language meant as a caveat to the whole second sentence of
26 Section 8394 (i.e., “at least one person shall have a swordfish permit issued to that person that has
27 not been revoked or suspended, *except as otherwise provided by* regulations adopted by the
28 commission”)?

29 **The Commission invites comment on the meaning of the clause “subject to regulations
30 adopted by the commission.”**

31 PART 24. TROUT

32 TITLE 1. TROUT GENERALLY

33 CHAPTER 1. PRELIMINARY PROVISIONS

34 § 43800. Provisions not exclusive

35 43800. The provisions of this part are not intended to be exclusive. Other
36 provisions that govern trout include, but are not limited to, the following
37 provisions:

38 (a) Section 555.

- 1 (b) Section 13010.
- 2 (c) Section 21950.
- 3 (d) Section 23355.
- 4 (e) Section 28415.
- 5 (f) Section 43805.
- 6 (g) **Section 2720.**
- 7 (h) **Section 2786.**
- 8 (i) **Section 7155.**
- 9 **Comment.** Section 43800 is new. It is added for drafting convenience.

10 **§ 43805. Legislative declaration**

11 43805. (a) The Legislature finds and declares all of the following:

12 (1) California has the greatest biodiversity of native trout species of any state in
13 the nation. Trout can be found in more than 18,000 miles of California's cooler
14 streams. California's trout are the principal sport fish in 3,581 cold-water lakes
15 and reservoirs.

16 (2) Self-sustaining native trout populations in "Heritage Trout Waters" that
17 retain and promote genetic trout diversity and overall sustainable watershed and
18 ecosystem environmental health are state policy.

19 (b) Funding for "Heritage Trout Waters" is a priority for the Hatchery and
20 Inland Fisheries Fund.

21 (c) The commission may designate "Heritage Trout Waters" to recognize the
22 beauty, diversity, historical significance, and special values of California's native
23 trout. The commission's designation shall meet both of the following criteria:

24 (1) Only waters supporting populations that best exemplify indigenous strains of
25 native trout within their historic drainages may qualify for designation.

26 (2) Only waters providing anglers with an opportunity to catch native trout
27 consistent with the conservation of the native trout may qualify for designation.

28 (3) Any stocking of heritage trout waters shall meet the criteria established by
29 Chapter 1 (commencing with Section 11700) of Title 2 of Part 4 of Division 6.

30 **Comment.** Section 43805 continues former Fish and Game Code Section 7260 without
31 substantive change.

32 **CHAPTER 2. SHIPMENT OF TROUT**

33 **§ 43850. Transport of trout**

34 43850. (a) It is unlawful at any time to offer for shipment, ship, or receive for
35 shipment, or transport from this state any trout taken in the waters of this state,
36 except as provided in subdivision (b).

37 (b) The following persons may personally transport from this state not more than
38 one daily bag limit of trout:

39 (1) The holder of a nonresident sport fishing license.

(2) A person on active military duty with the armed forces of the United States who possesses a valid angling license.

(3) A person on active military duty with an auxiliary branch of the armed forces of the United States who possesses a valid angling license.

Comment. Section 43850 restates former Fish and Game Code Section 2356 without substantive change.

Note. Proposed Section 43850 is intended to restate existing Fish and Game Code Section 2356 to clarify the meaning of that provision, without changing its substantive effect. The existing provision reads as follows:

“2356. It is unlawful at any time to offer for shipment, ship, or receive for shipment, or transport from this state any trout taken in the waters of this state, except that the holder of a nonresident angling license, or any person on active military duty with the armed forces of the United States or on active military duty with an auxiliary branch thereof who possesses a valid angling license, may personally transport from this state not more than one daily bag limit of trout.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the provision.

§ 43855. Shipment of trout into area where season closed

43855. It is unlawful to ship trout into an area where the season is closed, unless the shipment is accompanied by a written statement containing the name and address of, and signed by, the person taking the trout, and countersigned, for the purpose of identification, by the agent of the carrier to whom the trout are offered for shipment.

Comment. Section 43855 continues former Fish and Game Code Section 2358 without substantive change.

CHAPTER 3. STEELHEAD TROUT

Article 1. General Provisions

§ 43900. Provisions not exclusive

43900. This chapter includes some but not all provisions of this code that govern steelhead trout. Other provisions that govern steelhead trout include, but are not limited to, the following provisions:

(a) Section 9105.

(b) Chapter 3 (commencing with Section 11900) of Title 2 of Part 4 of Division 6.

(c) Section 13105.

(d) Section 13900.

(e) Section 15440.

(f) Section 24950.

Comment. Section 43900 is new. It is added for drafting convenience.


Article 2. Take

§ 43950. Hook other than in mouth

43950. (a) It is unlawful, in inland waters, to kill or retain in possession any steelhead that has not taken the bait or lure in its mouth.

(b) Any steelhead hooked in inland waters other than in its mouth shall be released unharmed.

Comment. Section 43950 continues the part of former Fish and Game Code Section 5514 applicable to steelhead trout without substantive change.

 **Note.** See discussion of the proposed revision of this section following proposed Section 41005.

Article 3. Report-Restoration Card

§ 44000. Required trout fishing report-restoration card

44000. (a) In addition to a valid California sport fishing license and any applicable sport license issued pursuant to this code, a person taking steelhead trout in inland waters shall have in his or her possession a valid nontransferable steelhead trout fishing report-restoration card issued by the department. The cardholder shall record certain fishing information on the card as designated by the department. The month, day, and location fished shall be recorded before the cardholder begins fishing for the day and when the cardholder moves to another location listed on the back of the report-restoration card. The cardholder shall immediately record catch information upon keeping a steelhead trout and immediately record catch information regarding released steelhead trout whenever the cardholder finishes fishing for the day, or moves to another location listed on the back of the report-restoration card. The cardholder shall return the card to the department on a schedule or date established by the department.

(b) The base fee for the card shall be five dollars (\$5) for the 2004 license year, which may be adjusted annually thereafter pursuant to Section 3755. The funds received by the department from the sale of the card shall be deposited in the Fish and Game Preservation Fund, and shall be available for expenditure upon appropriation by the Legislature. The department shall maintain the internal accountability necessary to ensure that all restrictions and requirements pertaining to the expenditure of these funds are met.

(c) The commission shall adopt regulations necessary to implement this section. These regulations shall include, but not be limited to, procedures necessary to obtain appropriate steelhead trout resources management information, a requirement that the card contain a statement explaining potential uses of the funds received as authorized by Section 44005, and a requirement that the cards be returned to the department.

Comment. Section 44000 continues former Fish and Game Code Section 7380 without substantive change.

1 **§ 44005. Use of revenue**

2 44005. (a) Revenue received pursuant to Section 44000 may be expended, upon
3 appropriation by the Legislature, only to monitor, restore, or enhance steelhead
4 trout resources consistent with Sections 11810 and 11815, and to administer the
5 fishing report-restoration card program. The department shall submit all proposed
6 expenditures, including proposed expenditures for administrative purposes, to the
7 Advisory Committee on Salmon and Steelhead Trout for review and comment
8 before submitting a request for inclusion of the appropriation in the annual Budget
9 Bill. The committee may recommend revisions in any proposed expenditure to the
10 Legislature and the commission.

11 (b) The department shall report to the Legislature on or before July 1, 2016,
12 regarding the steelhead trout fishing report-restoration card program's projects
13 undertaken using revenues derived pursuant to that program, the benefits derived,
14 and its recommendations for revising the fishing report-restoration card
15 requirement, if any. The report submitted pursuant to this subdivision shall be
16 submitted in compliance with Section 9795 of the Government Code.

17 **Comment.** Section 44005 continues former Fish and Game Code Section 7381 without
18 substantive change.

19 **§ 44010. Inoperative date of article**

20 44010. This article shall become inoperative on July 1, 2017, and, as of January
21 1, 2018, is repealed, unless a later enacted statute that is enacted before January 1,
22 2018, deletes or extends the date on which this article becomes inoperative or is
23 repealed.

24 **Comment.** Section 44010 continues former Fish and Game Code Section 7382 without
25 substantive change.

26 **TITLE 2. COMMERCIAL PROVISIONS**

27 **CHAPTER 1. TROUT GENERALLY**

28 **§ 44100. Application of title**

29 44100. For purposes of Section 37805, the provisions in this title are commercial
30 provisions.

31 **Comment.** Section 44100 is new. It is added for drafting convenience.

32 **§ 44105. Sale or purchase**

33 44105. (a) Except as otherwise provided in this title, it is unlawful to sell or
34 purchase any species of trout.

35 (b) Subdivision (a) does not apply to trout grown pursuant to Part 1
36 (commencing with Section 23300) of Division 7.

37 **Comment.** Subdivision (a) of Section 44105 continues former Fish and Game Code Section
38 8430 without change.

1 Subdivision (b) continues former Fish and Game Code Section 8433 without change.

2 CHAPTER 2. STEELHEAD AND DOLLY VARDEN TROUT

3 § 44200. Taken from out of state

4 44200. (a) Dolly Varden or steelhead trout taken outside the state may be
5 possessed and sold within the state after inspection and tagging in accordance with
6 regulations adopted by the commission.

7 (b) The inspection and tagging shall be paid for by the person submitting the
8 trout for inspection and tagging.

9 (c) Notwithstanding subdivision (a), steelhead trout taken outside the state may
10 not be sold or possessed in District 2515 in excess of the daily bag limit on
11 steelhead trout for that district.

12 (d) This section does not apply to trout grown pursuant to Part 1 (commencing
13 with Section 23300) of Division 7.

14 **Comment.** Subdivisions (a) and (b) of Section 44200 continues former Fish and Game Code
15 Section 8431 without substantive change.

16 Subdivision (c) continues former Fish and Game Code Section 8432 without substantive
17 change.

18 Subdivision (d) continues former Fish and Game Code Section 8433 without change.

19 § 44205. Take with purse or round haul net

20 44205. Steelhead may not be taken with a purse or round haul net.

21 **Comment.** Section 44205 continues the part of former Fish and Game Code Section 8756
22 applicable to steelhead without substantive change.

23 PART 25. TUNA

24 TITLE 1. TUNA GENERALLY

25 CHAPTER 1. PRELIMINARY PROVISIONS

26 § 44300. Provisions not exclusive

27 44300. The provisions of this part are not intended to be exclusive. Other
28 provisions that govern tuna include, but are not limited to, the following
29 provisions:

30 (a) Section 21015.

31 (b) Section 21950.

32 (c) **Section 10064.**

33 (d) **Section 10667.**

34 **Comment.** Section 44300 is new. It is added for drafting convenience.

CHAPTER 2. TAKE OR POSSESSION

§ 44350. Conformity with federal law

44350. The commission may prohibit the taking or possessing of tuna in the same manner as taking or possessing tuna is prohibited by federal law or by rules or regulations adopted pursuant to the Tuna Conventions Act of 1950, as amended by Public Law 87-814 of the 87th Congress, notwithstanding any other provision of this code.

Comment. Section 44350 continues former Fish and Game Code Section 313 without change.

TITLE 2. COMMERCIAL PROVISIONS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 44400. Application of title

44400. For purposes of Section 37805, the provisions in this title are commercial provisions.

Comment. Section 44400 is new. It is added for drafting convenience.

CHAPTER 2. SPECIFIC TYPES OF TUNA

§ 44450. Albacore

44450. Albacore may be taken at any time.

Comment. Section 44450 continues former Fish and Game Code Section 8376 without change.

§ 44455. Bluefin tuna

44455. (a) Bluefin tuna may be taken at any time.

(b) No bluefin tuna weighing less than 7 1/2 pounds may be sold, purchased, or processed.

Comment. Subdivision (a) of Section 44455 continues the part of former Fish and Game Code Section 8374 applicable to bluefin tuna without change.

Subdivision (b) continues former Fish and Game Code Section 8375 without change.

§ 44460. Pacific bonito

44460. (a) Pacific bonito shall be measured from the tip of the lower jaw to the center of the fork of the tail fin.

(b) Pacific bonito less than 24 inches fork length or five pounds in weight shall not be taken or possessed on any vessel at any time for any commercial purpose, except as follows:

(1) A load of bonito taken on a vessel by the use of round haul nets may contain 18 percent or less by number of bonito smaller than the minimum size.

(2) A load of fish taken on a vessel by the use of gill nets or trammel nets may contain 1,000 pounds or less of bonito smaller than the minimum size per trip.

(3) Pacific bonito smaller than the minimum size that are incidentally taken may be used for any purpose.

Comment. Subdivision (a) of Section 44460 continues former Fish and Game Code Section 8377.5 without change.

Subdivision (b) continues former Fish and Game Code Section 8377 without substantive change.

§ 44465. Skipjack

44465. Skipjack may be taken at any time.

Comment. Section 44465 continues former Fish and Game Code Section 8378 without change.

§ 44470. Yellowfin tuna

44470. Yellowfin tuna may be taken at any time.

Comment. Section 44470 continues the part of former Fish and Game Code Section 8374 applicable to yellowfin tuna without change.

PART 26. YELLOWTAIL

TITLE 1. YELLOWTAIL GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 44600. Provisions not exclusive

44600. The provisions of this part are not intended to be exclusive. Other provisions that govern yellowtail include, but are not limited to, the following provisions:

(a) Section 21950.

(b) **Section 10664.**

(c) **Section 10667.**

Comment. Section 44600 is new. It is added for drafting convenience.

CHAPTER 2. IMPORTATION

§ 44650. Delivery of yellowtail taken from waters off coast of Mexico

44650. (a) Yellowtail taken in waters lying south of the maritime boundary line between the United States and Mexico, with that maritime boundary line including, but not limited to, the federal Exclusive Economic Zone boundary, may be delivered to California ports aboard boats, including boats carrying purse seine or round haul nets, in accordance with those regulations as the commission may

1 make governing the inspection and marking of those fish imported into this state.
2 The cost of that inspection and marking shall be paid by the importer.

3 (b) Yellowtail taken in Mexico shall not be imported, unless legally taken and
4 legally possessed, and a declaration is submitted to the department pursuant to
5 Section 28425.

6 **Comment.** Section 44650 continues the part of former Fish and Game Code Section 2362
7 applicable to yellowtail without substantive change.

8 TITLE 2. COMMERCIAL PROVISIONS

9 § 44750. Application of title

10 44750. For purposes of Section 37805, the provisions in this title are commercial
11 provisions.

12 **Comment.** Section 44750 is new. It is added for drafting convenience.

13 § 44755. Size restrictions

14 44755. (a) Yellowtail shall be measured from the tip of the lower jaw to the end
15 of the longer lobe of the tail.

16 (b) Yellowtail measuring equal to or greater than 28 inches in length may be
17 taken with hook and line at any time.

18 (c) Yellowtail measuring less than 28 inches in length may not be sold or
19 purchased, except that not more than five yellowtail per day of any length may be
20 possessed by the holder of a commercial fishing license for noncommercial use, if
21 taken incidentally in commercial fishing.

22 **Comment.** Subdivision (a) of Section 44755 continues the part of former Fish and Game Code
23 Section 8386 applicable to yellowtail without substantive change.

24 Subdivision (b) continues the part of former Fish and Game Code Section 8382 applicable to
25 yellowtail without substantive change.

26 Subdivision (c) continues the part of former Fish and Game Code Section 8384 applicable to
27 yellowtail without substantive change.

28 § 44760. Possession restrictions

29 44760. From May 1 to August 31, inclusive, all of the following are unlawful:

30 (a) Possession by one person on a boat, barge, or other vessel of more than 500
31 pounds of yellowtail.

32 (b) Possession by two or more persons on a boat, barge, or other vessel a
33 combined weight of more than 500 pounds of yellowtail per person.

34 (c) Possession by five or more persons on a boat, barge, or other vessel a
35 combined weight of more than 2,500 pounds of yellowtail.

36 **Comment.** Section 44760 continues former Fish and Game Code Section 8387 without
37 substantive change.

1 **§ 44765. Use of purse seines or round haul nets**

2 44765. (a) It is unlawful to use any purse seine or round haul net to take a
3 yellowtail.

4 (b) It is unlawful to possess a yellowtail, except those taken south of the
5 international boundary between the United States and Mexico, and imported into
6 the state under regulations of the commission as provided in Section 44650, on
7 any boat carrying or using any purse seine or round haul net, including, but not
8 limited to, a bait net as described in Section 235.

9 (c) Notwithstanding subdivision (b), the department may issue permits to hook
10 and line commercial fishermen to possess a bona fide bait net on their vessels for
11 the purpose of taking bait for their own use only.

12 **Comment.** Section 44765 continues the parts of former Fish and Game Code Section 8623(a),
13 (b), and (e) applicable to yellowtail without substantive change.

14 **Note.** The portion of existing Fish and Game Code Section 8623(a) and (b) that applies to
15 yellowtail would be continued by proposed Section 44765(a) and (b).

16 Existing Section 8623 also includes a disclaimer in subdivision (e) that, by its terms, applies to
17 all provisions of that section (“Notwithstanding the provisions of this section...”)

18 However, despite the broad wording of this disclaimer, the Commission’s analysis suggests
19 that the substantive portion of subdivision (e) logically applies only to subdivision (b). Proposed
20 Section 30465(c) would state that specific application expressly.

21 **The Commission invites comment on whether that expressly stated application would**
22 **cause any problems.**

23 **DIVISION 11. INVERTEBRATES**

24 **PART 1. GENERAL PROVISIONS**

25 **§ 45000. Governance by other provisions**

26 45000. Animals governed by this division are also governed by other provisions
27 of this code, including but not limited to Divisions 6 (commencing with Section
28 8000) and 7 (commencing with Section 23300).

29 **Comment.** Section 45000 is new. It is added for drafting convenience. It makes clear that this
30 division does not contain the only provisions of the code governing invertebrates, and that
31 invertebrates governed by this division may also be governed by other law. For example, as the
32 definition of “fish” includes invertebrates, invertebrates may also be governed by other provisions
33 of the code that apply by their terms to “fish.” See Sections 200, 380.

34 **§ 45005. Scope of commercial provisions**

35 45005. The provisions of this division that are expressly identified as
36 commercial provisions apply to the taking and possession of invertebrates for any
37 commercial purpose. Those commercial provisions do not apply to activities
38 governed by Part 1 (commencing with Section 23300) of Division 7.

39 **Comment.** Section 45005 continues the part of former Fish and Game Code Section 7600
40 applicable to the provisions of this division without substantive change.

1 **§ 45010. Take or possession in tidal area**

2 45010. (a) Except as otherwise expressly permitted in this code, an invertebrate
3 may not be taken, possessed aboard a boat, or landed for a commercial purpose by
4 any person in any tide pool or tidal area, including tide flats or other areas between
5 the high tidemark and 1,000 feet beyond the low tidemark, unless a valid tidal
6 invertebrate permit has been issued to that person that has not been suspended or
7 revoked.

8 (b) The taking, possessing, or landing of an invertebrate pursuant to this section
9 shall be subject to regulations adopted by the commission.

10 **Comment.** Section 45010 continues former Fish and Game Code Section 8500 without
11 substantive change.

12 **PART 2. DISEASE CONTROL [RESERVED]**

13 **PART 3. CLASSES OF INVERTEBRATES**

14 **TITLE 1. CRUSTACEANS**

15 **CHAPTER 1. PRELIMINARY PROVISIONS**

16 **§ 45250. Use as bait**

17 45250. A crustacean may be used for bait, or released in the same waters from
18 which it was taken.

19 **Comment.** Section 45250 continues the part of former Fish and Game Code Section 5505
20 applicable to crustaceans without substantive change.

21 **CHAPTER 2. COMMERCIAL PROVISIONS**

22 **§ 45300. Application of title**

23 45300. For purposes of Section 45005, the provisions in this chapter are
24 commercial provisions.

25 **Comment.** Section 45300 is new. It is added for drafting convenience.

26 **§ 45305. Take with powered equipment**

27 45305. (a) Powered equipment of such design as may be prescribed by the
28 commission may be used to take crustaceans under a revocable permit issued by
29 the department and under regulations adopted by the commission.

30 (b) Taking of crabs or lobster under this section is subject to Title 2
31 (commencing with Section 46800) of Part 6, and Title 2 (commencing with
32 Section 49450) of Part 9.

33 **Comment.** Section 45305 continues the part of former Fish and Game Code Section 9053
34 applicable to crustaceans without substantive change.

Notes. (1) Existing Fish and Game Code Section 9053(b) (which would be continued by proposed Section 45305(b)) provides in part that taking of lobster or crabs under that section is “subject to Article 5 (commencing with Section 8250)....” In the proposed law, all the provisions contained in that article have been continued in Title 2 (commencing with Section 49450) of Part 9. However, that proposed title contains two provisions relevant to the subject matter of Section 9053(b) that are *not* in the “Article 5” referenced in existing Section 9053(b) – existing Section 9001.7(k), and existing Section 9010(c)-(e).

The Commission invites comment on whether the additional inclusion of those two provisions in the cross-reference in proposed Section 45305(b) would cause any problems.

(2) Existing Section 9053(b) also provides that the taking authorized under that section is “subject to Article 6 (commencing with Section 8275).” In the proposed law, all provisions contained in that article have been continued in Title 2 (commencing with Section 46800) of Part 6. However, that proposed title contains several additional provisions relevant to the subject matter of Section 9053(b) that are *not* in the “Article 6” referenced in existing Section 9053(b): Sections 8834, 8834.5, 9011, and 9012.

The Commission invites comment on whether the additional inclusion of these provisions in the cross-reference in proposed Section 45305(b) would cause any problems.

TITLE 2. MOLLUSKS

CHAPTER 1. PRELIMINARY PROVISIONS

§ 45400. Use as bait

45400. A mollusk may be used for bait, or released in the same waters from which it was taken.

Comment. Section 45400 continues the part of former Fish and Game Code Section 5505 applicable to mollusks without substantive change.

§ 45405. Take with powered equipment

45405. Powered equipment of such design as may be prescribed by the commission may be used to take mollusks under a revocable permit issued by the department and under regulations adopted by the commission.

Comment. Section 45405 continues the part of former Fish and Game Code Section 9053 applicable to mollusks without substantive change.

CHAPTER 2. MOLLUSK PURIFICATION

§ 45450. Specified districts

45450. Notwithstanding Sections 19805, 45505, 45510, and 46410, native and nonnative mollusks may be taken in Districts 2600 and 2605 and moved to other areas to be purified for human consumption under rules and regulations that may be established by the commission. The regulations may include, but are not limited to, bag limits, methods of harvest, and provisions for public use. Mollusks taken under this section shall not be used for human consumption unless such use is approved by the State Department of Public Health.

Comment. Section 45450 continues former Fish and Game Code Section 5700 without

substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of specified references in former Fish and Game Code to State Department of Health Services).

Note. The reference in existing Fish and Game Code Section 5700 to the State Department of Health Services would be revised by proposed Section 45450 to instead refer to the State Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and 131052(6).

The Commission invites comment on whether that revision is appropriate.

§ 45455. Sanitary surveys

45455. The State Department of Public Health may make sanitary surveys of mollusk-growing areas or may use sanitary surveys of mollusk-growing areas made by qualified state or county agencies, and based on such information may classify such areas for purposes of harvesting and moving mollusks that are to be purified for human consumption in accordance with Section 45450. The State Department of Public Health shall adopt rules and regulations as are necessary to implement this section.

Comment. Section 45455 continues former Fish and Game Code Section 5701 without substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of specified references in former Fish and Game Code to State Department of Health Services).

Note. The reference in existing Fish and Game Code Section 5701 to the State Department of Health Services would be revised by proposed Section 45455 to instead refer to the State Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and 131052(6).

The Commission invites comment on whether that revision is appropriate.

§ 45460. Certification of water quality

45460. If examinations are conducted by the State Department of Public Health pursuant to this chapter for purposes of certifying the quality of shellfish-growing waters, certification of water quality shall be commenced within 30 days and completed within six months of the filing of an application by an aquaculturist.

Comment. Section 45460 continues former Fish and Game Code Section 5701.5 without substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of specified references in former Fish and Game Code to State Department of Health Services).

Note. The reference in existing Fish and Game Code Section 5701.5 to the State Department of Health Services would be revised by proposed Section 45460 to instead refer to the State Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and 131052(6).

The Commission invites comment on whether that revision is appropriate.

§ 45465. Royalty

45465. Any person who moves any native mollusks taken under regulations of the commission from Districts 2600 and 2605, for purposes of purification for human consumption, shall pay a royalty, as the commission may prescribe, of not less than two cents (\$0.02) per pound of mollusks so taken.

Comment. Section 45465 continues former Fish and Game Code Section 5702 without substantive change.

CHAPTER 3. SHELLFISH

§ 45500. Authority of State Department of Public Health

45500. (a) The State Department of Public Health may do any of the following:

- (1) Examine any area from which shellfish may be taken.
- (2) Determine whether the area is subject to sewage contamination.
- (3) Determine whether the taking of shellfish from the area does or may constitute a menace to the lives or health of human beings.

(b) If an examination is conducted pursuant to this chapter for purposes of certifying the quality of shellfish-growing waters, certification of water quality shall be commenced within 30 days, and completed within three months of the filing of an application by an aquaculturist.

Comment. Subdivision (a) of Section 45500 combines and continues former Fish and Game Code Sections 5669 and 5671 without substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of specified references in former Fish and Game Code to State Department of Health Services).

Subdivision (b) continues former Fish and Game Code Section 5675 without substantive change.

Notes. (1) The reference in existing Fish and Game Code Section 5671 to the State Department of Health Services would be revised by proposed Section 45500 to instead refer to the State Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and 131052(6).

The Commission invites comment on whether that revision is appropriate.

(2) Existing Fish and Game Code Section 5675 (which would be continued by proposed Section 45500(b)) requires a specified examination to be completed “within three months of the filing of an application by an aquaculturist.” However, neither the section nor the article in which it appears provides any detail about this application.

The Commission invites comment on the intended meaning of this reference in existing Section 5675.

§ 45505. Prohibited take

45505. It is unlawful to take shellfish used or intended to be used for human consumption from any area from which it has been determined, as provided in this chapter, that the taking of shellfish does or may constitute a menace to the lives or health of human beings.

Comment. Section 45505 combines and continues former Fish and Game Code Section 5670 and the second paragraph of former Fish and Game Code Section 5672 without substantive change.

§ 45510. Notice of contamination

45510. (a) If the State Department of Public Health determines that an area from which any shellfish may be taken is or may be subject to sewage contamination, and that the taking of shellfish from that area does or may constitute a menace to

1 the lives or health of human beings, that agency shall ascertain as accurately as it
2 can the bounds of the contamination, and shall post notices on or in the area
3 describing its bounds and prohibiting the taking of shellfish from the area.

4 (b) The taking of shellfish from the area is unlawful after the completion of the
5 publication of the notices as prescribed in this article.

6 (c) The fact of posting the notices shall be published once a week for four
7 successive weeks in a newspaper of general circulation published in the county in
8 which the contaminated area is located. If no newspaper of general circulation is
9 published in the county, the fact of the posting shall be published once a week for
10 four successive weeks in a newspaper of general circulation published in an
11 adjoining county.


12 **Comment.** Subdivision (a) of Section 45510 continues the first paragraph of former Fish and
13 Game Code Section 5672 without substantive change.

14 Subdivision (b) continues former Fish and Game Code Section 5673 without substantive
15 change.

16 § 45515. Enforcement

17 45515. The State Department of Public Health shall enforce the provisions of
18 this chapter, and for that purpose the inspectors and employees of that agency may
19 at any time enter public or private property where shellfish may be located.

20 **Comment.** Section 45515 continues former Fish and Game Code Section 5674 without
21 substantive change. See also Health & Safety Code §§ 20, 131052(6) (directing revision of
22 specified references in former Fish and Game Code to State Department of Health Services).

23  **Note.** The reference in existing Fish and Game Code Section 5674 to the State Department of
24 Health Services would be revised by proposed Section 45515 to instead refer to the State
25 Department of Public Health, pursuant to the directive of Health & Safety Code Sections 20 and
26 131052(6).

27 **The Commission invites comment on whether that revision is appropriate.**

28 CHAPTER 2. COMMERCIAL PROVISIONS [RESERVED]

29 PART 4. ABALONE

30 TITLE 1. ABALONE GENERALLY

31 CHAPTER 1. PRELIMINARY PROVISIONS

32 § 45650. Mollusk

33 45650. For the purposes of Title 2 (commencing with Section 45400) of Part 3,
34 an abalone is a mollusk.

35 **Comment.** Section 45650 is new. It is added for drafting convenience.

1 **§ 45655. Provisions not exclusive**

2 45655. The provisions of this part are not intended to be exclusive. Other
3 provisions that govern abalone include, but are not limited to, the following
4 provisions:

5 (a) Section 14875.

6 (b) **Section 10664.**

7 (c) **Section 10666.**

8 (d) **Section 10667.**

9 **Comment.** Section 45655 is new. It is added for drafting convenience.

10 CHAPTER 2. TAKE

11 **§ 45700. Take from ocean waters**

12 45700. (a) A person shall not take abalone from ocean waters unless he or she
13 first obtains, in addition to a valid California sport fishing license and any
14 applicable license validation or issued pursuant to this code, an abalone report
15 card, and maintains that report card in his or her possession while taking abalone.

16 (b) The department or an authorized license agent shall issue an abalone report
17 card upon payment of a fee of fifteen dollars (\$15) in the 2004 license year, which
18 shall be adjusted annually thereafter pursuant to Section 3755.

19 (c) The commission shall adjust the amount of the fees specified in subdivision
20 (b) as necessary, to fully recover, but not exceed, all reasonable administrative and
21 implementation costs of the department and the commission relating to those
22 licenses.

23 (d) Notwithstanding subdivision (a) of Section 4400, a person who violates this
24 section is guilty of an infraction punishable by a fine of not less than one hundred
25 dollars (\$100) and not to exceed one thousand dollars (\$1,000), or of a
26 misdemeanor.

27 **Comment.** Subdivisions (a) through (c) of Section 45700 continue former Fish and Game
28 Code Section 7149.8 without substantive change.

29 Subdivision (d) continues former Fish and Game Code Section 12000(b)(3) without
30 substantive change.

31 CHAPTER 3. IMPORTATION

32 **§ 45750. Requirements**

33 45750. (a) Abalone or abalone meat legally taken outside this state may be
34 imported into this state when accompanied by a United States customhouse entry
35 certificate showing the place of origin, and a certificate or clearance from the
36 responsible governmental agency to the effect that the shipment was made in
37 compliance with the laws and regulations of the place or country of origin.

38 (b) Abalone and abalone meat described in subdivision (a) may be possessed in
39 this state, and shipped or transported out of the state, but all containers of that

1 abalone or abalone meat shall be marked with the abalone's place or country of
2 origin.

3 **Comment.** Section 45750 continues former Fish and Game Code Section 2371 without
4 substantive change.

5 CHAPTER 4. GEOGRAPHIC RESTRICTIONS

6 § 45800. Moratorium on take, possession, or landing

7 45800. (a) A moratorium is imposed on the taking, possessing, or landing of
8 abalone (genus *Haliotis*) for commercial or recreational purposes in ocean waters
9 of the state south of a line drawn due west magnetic from the center of the mouth
10 of the San Francisco Bay, including all islands offshore the mainland of
11 California, including, but not limited to, the Farallon Islands and the Southern
12 California Channel Islands.

13 (b) It is unlawful to take, possess, or land abalone for commercial or recreational
14 purposes in those ocean waters while the moratorium described in subdivision (a)
15 is in effect.

16 **Comment.** Section 45800 continues former Fish and Game Code Section 5521 without
17 substantive change.

18 § 45805. Commercial restriction on take

19 45805. (a) In addition to the moratorium imposed by Section 45800, and
20 notwithstanding any other provision of law, it is unlawful to take abalone for
21 commercial purposes in District 2570, District 2575, District 2590 north of Point
22 Lobos, District 2610, District 2615, District 2630, or District 2640 between
23 Southeast Rock and the extreme westerly end of Santa Catalina Island.

24 (b) For a person who is required to obtain a sport fishing license, the possession
25 of more than 12 individual abalone or abalone in excess of the annual bag limit is
26 evidence that the person possesses the abalone for commercial purposes.

27 **Comment.** Section 45805 continues former Fish and Game Code Section 5521.5 without
28 substantive change.

29 **Notes.** (1) There is a possible disconnect between subdivisions (a) and (b) of existing Section
30 5521.5 (which would be continued by proposed Section 45805). Subdivision (a) prohibits the *take*
31 of abalone for commercial purposes in specified locations, whereas subdivision (b) provides that
32 possession of a specified quantity of abalone by specified persons is *prima facie* evidence that the
33 person *possessed* the abalone for commercial purposes.

34 **Is this discrepancy between the conduct constituting the violation specified in subdivision**
35 **(a), and the conduct established by *prima facie* evidence pursuant to subdivision (b),**
36 **intended?**

(2) Existing Section 5521.5(b) on its face applies only to persons who are required to obtain sport fishing licenses. However, some persons are permitted to engage in sport fishing without a sport fishing license (e.g., a person under the age of 16 years).

Is Section 5521.5(b) meant to exclude such persons from the application of the provision, or is it solely meant to exclude commercial fishermen?

§ 45810. Collection as broodstock by aquaculturist

45810. Notwithstanding Sections 45800 and 45805, a registered aquaculturist may collect abalone for broodstock, in accordance with subdivision (a) of Section 23905.

Comment. Section 45810 continues former Fish and Game Code Section 5521.6 without substantive change.

CHAPTER 5. PENALTIES

§ 45850. Base punishment for violation

45850. (a) Notwithstanding Section 4400, and except as provided in Section 45855, the punishment for a violation of any provision of Section 45800 or 45805, or any regulation adopted pursuant to either Section 45800 or 45805, or of Section 13600 or 13605 involving abalone, is a fine of not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000) and imprisonment in a county jail for a period not to exceed one year. The court shall permanently revoke any commercial fishing license, commercial fishing permit, or sport fishing license issued by the department. Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section, may be seized and may be ordered forfeited by the court pursuant to subdivision (c) of Section 8630. Notwithstanding any other provision of law, the commercial license of any person arrested for a violation punishable under this section may not be sold, transferred, loaned, or leased, or used as security for any financial transaction until disposition of the charges is final.

(b) Notwithstanding any other provision of law, the money collected from any fine or forfeiture imposed or collected for the taking of abalone for any purpose other than for profit in violation of this article or any other provision of law shall be deposited as follows:

(1) One-half in the Abalone Restoration and Preservation Account.

(2) One-half in the county treasury of the county in which the violation occurred.

Comment. Section 45850 continues former Fish and Game Code Section 12009 without substantive change.

Notes. (1) Existing Fish and Game Code Section 12009(a) (which would be continued by proposed Section 45850(a)) specifies punishment for specified violations involving abalone “[n]otwithstanding Section 12000.” However, existing Section 12000 does not specify any punishment that would otherwise apply to abalone, nor does it specify a default punishment for a violation of the code.

The Commission believes it likely the section intended to include within this reference existing Section 12002, which in subdivision (a) does provide a default punishment for an unspecified code violation. Proposed Section 45850(a) would revise the reference to refer to the provision of the proposed law that would continue existing Sections 12000(a) and 12002(a).

(2) Existing Fish and Game Code Section 12009 (which would be continued by proposed Section 45850, immediately above) and existing Fish and Game Code Section 12006.6 (which would be continued by proposed Section 45855) both specify punishment for a violation of either existing Section 5521 or 5521.5. However, the punishment specified under Section 12006.6 is to be imposed only if the violation occurs in a specially described location, and the person committing the violation has engaged in specified excess take.

Section 12006.6 provides that punishment under that section shall be imposed “in addition to Section 12009,” suggesting Section 12006.6 is intended to *enhance* (i.e. add to) the punishment provided for under Section 12009. This construction of the two sections is also largely consistent with the punishments specified by the two sections, as the “base” punishment section (Section 12009) requires two aspects of punishment that are not part of the specified punishment under Section 12006.6 (jail time, and immediate revocation of any sport fishing license held by the offender).

However, the Commission still has several questions about the intended interrelationship between the two sections:

(a) Both sections provide for imposition of an identical fine – not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000). If it is correct that Section 12006.6 is intended to provide for enhanced punishment beyond that required by Section 12009, does that mean a person sentenced pursuant to Section 12006.6 can receive *double* that specified fine?

(b) The punishments called for by the two sections do not make clear which construction of the two sections is intended. For example, both sections provide for exactly the same fine – not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000). Does this mean that a person sentenced pursuant to Section 12006.6 can receive that same fine *twice*? That result would seem odd, given that Section 12006.6 provides for *no* additional jail time beyond the jail time required by Section 12009.

(c) Section 12009(b) provides (with emphasis added) that “[n]otwithstanding *any other provision of law*,” the money collected from *any* fine or forfeiture imposed or collected for the taking of abalone for any purpose other than for profit *in violation of this article or any other provision of law* shall be deposited as follows:

(1) One-half in the Abalone Restoration and Preservation Account.

(2) One-half in the county treasury of the county in which the violation occurred.”

However, Section 12006.6(d), a “provision of law” described by Section 12009(b), provides that “[n]ot less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.” It is unclear how these apportionment provisions are intended to be reconciled.

The Commission invites comment on all these issues.

§ 45855. Enhanced punishment for take in closed area

45855. Notwithstanding Section 4400, subdivision (a) of Section 8400, or 45865, and in addition to Section 45850, and notwithstanding the type of fishing license or permit held, if any person is convicted of a violation of Section 45800 or 45805, and the offense occurs in an area closed to the taking of abalone for commercial purposes, and the person takes or possesses more than 12 abalone at

one time or takes abalone in excess of the annual bag limit, that person shall be punished by all of the following:

(a) A fine of not less than fifteen thousand dollars (\$15,000) or more than forty thousand dollars (\$40,000).

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permits of that person. The person punished under this subdivision shall not, thereafter, be eligible for any license or permit to take or possess fish for sport or commercial purposes, including, but not limited to, a commercial fishing license or a sport fishing or sport ocean fishing license. Notwithstanding any other provision of law, the commercial license or permit of a person arrested for a violation punishable under this section may not be sold, transferred, loaned, leased, or used as security for any financial transaction until disposition of the charges is final.

(c) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense punishable under this section shall be seized, and shall be ordered forfeited in the same manner prescribed for nets or traps used in violation of this code, as described in Chapter 2 (commencing with Section 15400) of Title 3 of Part 6 of Division 6, or in Sections 19405, 19410, 19415, 19420, 19425, and 19430, or in the manner prescribed in Section 8630.

(d) Not less than 50 percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the Wildlife Protection Division of the department and used for law enforcement purposes.

Comment. Section 45855 continues former Fish and Game Code Section 12006.6 without substantive change.

Note. Existing Fish and Game Code Section 12006.6(a) (which would be continued by proposed Section 45855(a)) specifies punishment for specified violations involving abalone “[n]otwithstanding Section 12000.” However, existing Section 12000 does not specify any punishment that would otherwise apply to abalone, nor does it specify a default punishment for a violation of the code.

The Commission believes it likely the section intended to include within this reference existing Section 12002, which in subdivision (a) does provide a default punishment for an unspecified code violation. Proposed Section 45855(a) would revise the reference to refer to the provision of the proposed law that would continue existing Sections 12000(a) and 12002(a).

The Commission invites comment on this revision.

§ 45860. Suspension of license or permit based on pending criminal charge

45860. (a) When a complaint has been filed in a court of competent jurisdiction charging a person with a violation that may result in suspension or revocation of any license or permit to take abalone for a commercial purpose, and no disposition of the complaint has occurred within 90 days after it has been filed in the court, the department may suspend the license or permit of that person.

(b) Whenever the department proposes to suspend a license or permit under this section, notice and an opportunity to be heard shall be given to the licensee or permittee, before taking the action. The notice shall contain a statement setting forth the proposed action and the grounds for the action, and notify the licensee or permittee of his or her right to a hearing as provided in this section. Within 10 days after the receipt of the notice from the department, the licensee or permittee may request a hearing. The hearing shall be held by the commission at the next regularly scheduled hearing of the commission held more than 30 days after the notice of intent to suspend the license or permit was sent. The licensee or permittee shall be given 10 days' notice of the time and place of the hearing.

(c) A decision shall be made within a reasonable time on whether the license or permit shall be suspended until the disposition of the complaint by the court. In determining whether to order the suspension, the commission shall consider whether or not the violation could have a detrimental effect on the resources and whether or not a suspension is in the best public interest, and shall find whether there is sufficient evidence that a violation has occurred. A failure to make a finding that there is sufficient evidence that a violation has occurred, or a finding there is insufficient evidence, shall terminate the proceedings under this section.

(d) If the person is acquitted of the charges in the complaint, or the charges are dismissed, any suspension under this section is thereby terminated.

(e) No complaint shall be filed in a court charging a commercial abalone violation unless evidence supporting the charge has been reviewed by the appropriate county or city prosecuting agency, and a criminal complaint has been issued by that agency.

Comment. Section 45860 continues former Fish and Game Code Section 12002.10 without substantive change.

§ 45865. Revocation of license or permit upon conviction

45865. (a) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permit of any person convicted of either of the following:

(1) Taking or possessing abalone out of season.

(2) Taking or possessing abalone taken illegally from any area north of Point Sur.

(b) The court shall order the department to permanently revoke, and the department shall permanently revoke, the commercial fishing license and any commercial fishing permit of any person convicted of either of the following offenses, if the person possessed more than 12 abalone at the time of the offense:

(1) Removing abalone from the shell, or possessing abalone illegally removed from the shell.

(2) Taking or possessing abalone that are less than the minimum size.

(c) Any person whose license or permit is revoked pursuant to subdivision (a) or (b) shall not thereafter be eligible for any license or permit to take or possess fish for a sport or commercial purpose.

Comment. Section 45865 continues former Fish and Game Code Section 12002.8(a)-(c) without substantive change.

CHAPTER 6. RECREATIONAL ABALONE MANAGEMENT PROGRAM

§ 45950. “Program”

45950. For the purposes of this chapter, the following terms have the following meanings:

(a) “Program” means the Recreational Abalone Management Program.

(b) “Research” includes, but is not limited to, investigation, experimentation, monitoring, and analysis.

(c) “Management” means establishing and maintaining an optimal sustainable utilization.

Comment. Subdivision (a) of Section 45950 continues the third sentence of former Fish and Game Code Section 7149.9(a) without change.

Subdivisions (b) and (c) continue the second sentence of former Fish and Game Code Section 7149.9(a)(1) without substantive change.

§ 45955. Use of fees

45955. (a) Fees received by the department pursuant to Section 45700 shall be deposited in the Abalone Restoration and Preservation Account within the Fish and Game Preservation Fund, which is hereby created. Notwithstanding Section 13340 of the Government Code, the moneys in the account are continuously appropriated, without regard to fiscal year, to the department to be used only for the Recreational Abalone Management Program.

(b) At least 15 percent of the funds deposited in the account shall be used for program activities south of San Francisco. To the extent possible, participants in the management activities of the program in that area shall be former commercial abalone divers.

(c) The department shall maintain internal accounts that ensure that the fees received pursuant to Section 45700 are disbursed for the purposes of subdivision (a). Not more than 20 percent of the fees received pursuant to Section 45700 shall be used for administration by the department.

(d) Unencumbered fees collected pursuant to Section 45700 during any previous calendar year may be expended for the purposes of subdivisions (a) and (b). All interest and other earnings on the fees received pursuant to Section 45700 shall be deposited in the account and shall be used for the purposes of subdivisions (a) and (b).

Comment. Subdivision (a) of Section 45955 continues the first two sentences of former Fish and Game Code Section 7149.9(a) without substantive change.

Subdivisions (b) through (d) continue former Fish and Game Code Section 7149.9(b)-(d) without substantive change.

§ 45960. Program elements

45960. The program shall include the following elements:

(a) Research and management of abalone and abalone habitat.

(b) Supplementary funding of allocations for the enforcement of statutes and regulations applicable to abalone, including, but not limited to, the acquisition of special equipment and the production and dissemination of printed materials, such as pamphlets, booklets, and posters, aimed at compliance with recreational abalone regulations.

(c) Direction for volunteer groups relating to abalone and abalone habitat management, presentations of abalone related matters at scientific conferences and educational institutions, and publication of abalone related material.

Comment. Section 45960 continues the first sentence of former Fish and Game Code Section 7149.9(a)(1), and former Fish and Game Code Section 7149.9(a)(2) and (3), without substantive change.

CHAPTER 7. ABALONE RECOVERY AND MANAGEMENT PLAN

§ 46000. Declaration of legislative intent

46000. It is the intent of the Legislature that the commission undertake management of abalone in a manner consistent with the abalone recovery and management plan submitted pursuant to Section 46005.

Comment. Section 46000 continues former Fish and Game Code Section 5520 without substantive change.

§ 46005. Elements of plan

46005. (a) On or before January 1, 2003, the department shall submit to the commission a comprehensive abalone recovery and management plan. The plan shall contain all of the following:

(1) An explanation of the scientific knowledge regarding the biology, habitat requirements, and threats to abalone.

(2) A summary of the interim and long-term recovery goals, including a range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the recommended activities.

(3) Alternatives for allocating harvest between sport and commercial divers if the allocation of the abalone harvest is warranted.

(4) An estimate of the time and costs required to meet the interim and long-term recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting the final recovery goals. An implementation schedule shall also be included.

(5) An estimate of the time necessary to meet the interim recovery goals and triggers for review and amendment of strategy.

(6) A description of objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery. These criteria and procedures shall include, but not be limited to, the following:

(A) Specified abundance and size frequency distribution criteria for former abalone beds within suitable habitat not dominated by sea otters.

(B) Size frequency distributions exhibiting multiple size classes as necessary to ensure continued recruitment into fishable stock.

(C) The reproductive importance to the entire ecosystem of those areas proposed for reopening to harvest and the potential impact of each reopening on the recovery of abalone population in adjacent areas.

(b) Where appropriate, the recovery and management plan may include the following:

(1) A network of no-take abalone reserves.

(2) A total allowable catch, reflecting the long-term yield each species is capable of sustaining, using the best available science and bearing in mind the ecological importance of the species and the variability of marine ecosystems.


(3) A permanent reduction in harvest.

Comment. Section 46005 continues former Fish and Game Code Section 5522(a) and (b) without change.

§ 46010. Funding of plan

46010. Funding to prepare the recovery and management plan described in Section 46005 and any planning and scoping meetings shall be derived from the fees collected for the abalone report card.

Comment. Section 46010 continues former Fish and Game Code Section 5522(c) without substantive change.

 **Note.** Existing Fish and Game Code Section 5522(c) (which would be continued by proposed Section 46010) refers to an “abalone stamp.” Proposed Section 46010 would instead refer to an “abalone report card,” as it is the Commission’s understanding that the commercial take of abalone now requires a report card, rather than a stamp.

The Commission invites comment on whether proposed Section 46010 should be so revised, or should be revised to refer to an “abalone stamp or report card.”

§ 46015. Action following adoption of plan

46015. (a) On or before January 1, 2008, and following the adoption of the recovery and management plan by the commission, the department may apply to the commission to reopen sport or commercial fishing in all or any portion of the waters described in Section 45800.

(b) If the commission makes a finding that the resource can support additional harvest activities and that these activities are consistent with the abalone recovery plan, all or a portion of the waters described in Section 45800 may be reopened and management measures prescribed and implemented, as appropriate.

(c) The commission may close or, where appropriate, may establish no-take marine refuges in any area opened pursuant to this section if it makes a finding that this action is necessary to comply with the abalone management plan.

Comment. Section 46015 continues former Fish and Game Code Section 5522(d) without substantive change.

§ 46020. Priority for previous commercial permittees

46020. If the commission determines that commercial fishing is an appropriate management measure, priority for participation in the fishery shall be given to those persons who held a commercial abalone permit during the 1996–97 permit year.

Comment. Section 46020 continues former Fish and Game Code Section 5522(e) without change.

CHAPTER 8. RECREATIONAL ABALONE ADVISORY COMMITTEE

§ 46050. Committee requirements

46050. (a) The director shall appoint a Recreational Abalone Advisory Committee, consisting of nine members who shall serve without compensation. The members of the committee shall be selected as follows:

(1) Six members who are not officers or employees of the department. The six members shall be residents of California, and meet the following requirements:

(A) Two members shall reside north of the southern boundary line of Marin County and a line extending due east from the easternmost point of Marin County located in San Pablo Bay. The two members shall be selected from nominations submitted by the Northern California Shellfish Assessment Program or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(B) Two members shall reside south of the southern boundary line of Marin County and a line extending due east from the easternmost point of Marin County located in San Pablo Bay, and north of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost point in that boundary line. The two members shall be selected from nominations submitted by the Central California Council of Divers, the Southern California Shellfish Assessment Program, the Northern California Shellfish Assessment Program, or by individuals or organizations that actively participate in the recreational abalone fishery, except that not more than one of the members selected shall be an active or former commercial abalone diver or involved in commercial seafood processing or marketing.

(C) Two members shall reside south of the boundary between Santa Barbara and San Luis Obispo Counties and a line extending due east from the easternmost

1 point in that boundary line. The two members shall be selected from nominations
2 submitted by the Greater Los Angeles Council of Divers, the San Diego Council
3 of Divers, the Channel Islands Council of Divers, the Southern California
4 Shellfish Assessment Program, or by individuals or organizations that actively
5 participate in the recreational abalone fishery, except that not more than one of the
6 members selected shall be an active or former commercial abalone diver or
7 involved in commercial seafood processing or marketing.

8 (2) One member shall represent the department in enforcement activities and
9 shall be selected from personnel in the Wildlife Protection Division.

10 (3) Two members shall be marine scientists who are or have been involved in
11 abalone research at universities, state universities, or in state or federal programs.
12 Not more than one of the persons shall be an officer or employee of the
13 department.

14 (b) No member shall be involved in or profit from the culture for sale
15 (commercial aquaculture) of abalone.

16 (c) The advisory committee shall meet at least once each calendar year to review
17 proposals, and recommend projects and budgets to the director for the expenditure
18 of fees received pursuant to Section 45700. The committee may review progress
19 reports and the results of projects funded under this section, and make
20 recommendations to the director regarding abalone resource management.

21 **Comment.** Section 46050 continues former Fish and Game Code Section 7400 without
22 substantive change.

23 TITLE 2. COMMERCIAL PROVISIONS

24 CHAPTER 1. PRELIMINARY PROVISIONS

25 § 46100. Application of title

26 46100. For purposes of Section 45005, the provisions in this title are commercial
27 provisions.

28 **Comment.** Section 46100 is new. It is added for drafting convenience.
29

30 CHAPTER 2. ABALONE RESOURCES RESTORATION AND 31 ENHANCEMENT PROGRAM

32 § 46150. Funding of program

33 46150. (a) Any landing tax collected pursuant to former Fish and Game Code
34 Section 8051.3 shall be deposited in the Fish and Game Preservation Fund, and
35 shall be used only for the Abalone Resources Restoration and Enhancement
36 Program.

(b) The department shall maintain internal accounts necessary to ensure that the funds are disbursed for the purposes in this section.

(c) The department may use for administration no more of the landing tax collected pursuant to former Fish and Game Code Section 8051.3 than an amount equal to the regularly approved department indirect overhead rate.

(d) Any interest on the revenues from the landing tax collected pursuant to former Fish and Game Code Section 8051.3 shall be deposited in the fund, and used for the purposes in this subdivision.

Comment. Section 46150 continues former Fish and Game Code Section 8051.4(a) without substantive change.

PART 5. CLAMS

TITLE 1. CLAMS GENERALLY

CHAPTER 1. PRELIMINARY PROVISIONS

§ 46200. Mollusk

46200. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a clam is a mollusk.

Comment. Section 46200 is new. It is added for drafting convenience.

§ 46205. Provisions not exclusive

46205. The provisions of this part are not intended to be exclusive. Other provisions that govern clams include, but are not limited to, the following provisions:

(a) Section 19805.

(b) Section 20710.

(c) Section 23355.

(d) Section 24100.

(c) **Section 10711.**

Comment. Section 46205 is new. It is added for drafting convenience.

CHAPTER 2. PISMO CLAMS

§ 46250. Possession

46250. No pismo clam not in the shell may be possessed, except when it is being prepared for immediate consumption.

Comment. Section 46250 continues former Fish and Game Code Section 7290 without change.

1 **§ 46255. Shipping**

2 46255. No pismo clam taken in this state may be shipped.

3 **Comment.** Section 46255 continues former Fish and Game Code Section 2368 without
4 substantive change.

5 **§ 46260. Importing**

6 46260. (a) Pismo clams taken outside this state may be imported into this state
7 when accompanied by a United States customhouse entry certificate showing their
8 place of origin, and a certificate or clearance from the responsible governmental
9 agency to the effect that such shipment was made in compliance with the laws and
10 regulations of the place or country of origin.

11 (b) Pismo clams authorized for importation pursuant to subdivision (a) may be
12 canned and shipped outside this state.

13 (c) The commission may adopt regulations governing the inspection and
14 marking of pismo clams imported into this state. The cost of such inspection and
15 marking shall be paid by the importer of the pismo clams.

16 **Comment.** Section 46260 continues former Fish and Game Code Section 2369 without
17 substantive change.

18 CHAPTER 3. MISCELLANEOUS PROVISIONS

19 **§ 46300. Digging instruments**

20 46300. No instrument capable of being used to dig clams may be possessed
21 between one-half hour after sunset and one-half hour before sunrise, on any beach
22 of this state, except tools and implements used in the work of cleaning, repairing,
23 or maintaining a beach, when possessed by a person authorized by appropriate
24 authority to perform that work.

25 **Comment.** Section 46300 continues former Fish and Game Code Section 7332 without
26 substantive change.

27 TITLE 2. COMMERCIAL PROVISIONS

28 CHAPTER 1. PRELIMINARY PROVISIONS

29 **§ 46350. Application of title**

30 46350. For purposes of Section 45005, the provisions in this title are commercial
31 provisions.

32 **Comment.** Section 46350 is new. It is added for drafting convenience.

CHAPTER 2. TAKE

§ 46400. When take permitted

46400. Except as otherwise provided in this chapter, in Districts 2580, 2585, and 2615, clams may be taken between September 1 and April 30, and in other districts clams may be taken at any time.

Comment. Section 46400 continues former Fish and Game Code Section 8340 without substantive change.

§ 46405. Commission regulation of take of freshwater claims for commercial purpose

46405. Notwithstanding paragraph (2) of subdivision (b) of Section 1000, the commission shall regulate the taking of freshwater clams for commercial purposes.

Comment. Section 46405 continues former Fish and Game Code Section 8475 without substantive change.

Note. Existing Fish and Game Code Section 8475 (which would be continued by proposed Section 46405), is located in an article of the existing code entitled “Fresh-water Fish for Bait.”

The Commission invites comment on whether this section is intended to apply only to taking of freshwater clams for use as bait.

§ 46410. Littlenecks, chiones and hard-shell cockles

46410. (a) All species of clams commonly known as littlenecks, chiones and hard-shell cockles, including thin-shelled littleneck, common littleneck, Japanese littleneck, rough-sided littleneck, smooth chione, wavy chione, and banded chione, may be taken at any time, except in the waters of Marin County, where they may be taken only between September 1 and March 31.

(b) Notwithstanding subdivision (a), a clam listed in subdivision (a) that measures less than one and one-half inches in greatest diameter may not be taken, possessed, transported, or sold at any time.

(c) The bag limit on clams listed in subdivision (a) is 50 per day, in the aggregate. Not more than one daily bag limit of clams listed in subdivision (a) may be possessed by any person during one day.

(d) Notwithstanding any other provision of this section, a clam listed in subdivision (a), when legally taken outside the state and brought within the state pursuant to this code, may be possessed, transported, and sold without restrictions, except that any shipment of clams listed in subdivision (a) into this state shall be accompanied by a bill of lading, or invoice, showing the species, total number or weight, and the origin of the clams.

Comment. Section 46410 continues former Fish and Game Code Section 8341 without substantive change.

1 **§ 46415. Northern razor clams**

2 46415. Northern razor clams (*Siliqua patula*) may not be sold, except that
3 Northern razor clams taken outside the state and brought within the state may be
4 possessed, transported, and sold, without restriction.

5 **Comment.** Section 46415 continues former Fish and Game Code Section 8343 without
6 substantive change.

7 **§ 46420. Pismo clams**

8 46420. It is unlawful for any person to sell or purchase a pismo clam taken in
9 this state.

10 **Comment.** Section 46420 continues former Fish and Game Code Section 8346 without
11 substantive change.

12 **§ 46425. Washington clams and gappers**

13 46425. (a) In Districts 2515, 2580, and 2585, the bag limit on Washington clams
14 and gappers, sometimes known as bigneck clams, is 25 in the aggregate. In all other
15 districts the bag limit is 10 Washington clams and 10 gappers.

16 (b) No more than the daily bag limit may be possessed by any person during one
17 day, except that a market or restaurant, where clams are sold to the public, may
18 possess any number of Washington clams and gappers legally taken.

19 (c) In Districts 2580 and 2585, the holder of a commercial fishing license who
20 has in his possession a current daily written order for clams issued by a fish dealer
21 or restaurant may possess any number of Washington clams and gappers legally
22 taken, up to but not exceeding the number specified in the order.

23 **Comment.** Section 46425 continues former Fish and Game Code Section 8342 without
24 substantive change.

25 **PART 6. CRAB**

26 **TITLE 1. CRAB GENERALLY**

27 **CHAPTER 1. PRELIMINARY PROVISIONS**

28 **§ 46500. Crustacean**

29 46500. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a
30 crab is a crustacean.

31 **Comment.** Section 46500 is new. It is added for drafting convenience.

32 **§ 46505. Provisions not exclusive**

33 46505. The provisions of this part are not intended to be exclusive. Other
34 provisions that govern crab include, but are not limited to, the following
35 provisions:

36 (a) Section 16555.

- 1 (b) Section 19205.
- 2 (c) Section 19500.
- 3 (d) Section 19805.
- 4 (e) Section 20710.
- 5 (f) Section 20720.
- 6 (g) Section 47005.
- 7 (h) Section 47450.
- 8 **Comment.** Section 46505 is new. It is added for drafting convenience.

9 CHAPTER 2. IMPORTATION

10 § 46550. Importation of crab meat

11 46550. Crab meat from outside the state may be imported into the state under
12 regulations of the commission.

13 **Comment.** Section 46550 continues former Fish and Game Code Section 2364 without
14 substantive change.

15 TITLE 2. COMMERCIAL PROVISIONS

16 CHAPTER 1. PRELIMINARY PROVISIONS

17 § 46800. Application of title

18 46800. For purposes of Section 45005, the provisions in this title are commercial
19 provisions.

20 **Comment.** Section 46800 is new. It is added for drafting convenience.

21 § 46855. Definitions

22 46855. Unless the provision or context otherwise requires, the definitions in this
23 section govern the construction of this title.

24 (a) “Dungeness crab” or “market crab” means crab of the species *Cancer*
25 *magister*.

26 (b) “Reconstruction” means major work on the hull of a vessel to make that
27 vessel operable in the California crab fishery if that work may reasonably be
28 expected to be of a duration that will preclude operation of that vessel in the crab
29 fishery for the length of the crab season or longer.

30 (c) “Rock crab” means any crab of the genus *Cancer* other than Dungeness crab
31 and includes rock crab (*Cancer antennarius*), red crab (*Cancer productus*), and
32 yellow crab (*Cancer anthonyi*).

33 (d) “Under construction” means having plans and materials and proceeding with
34 work toward the completion of an operational Dungeness crab fishing vessel.

35 **Comment.** Section 46855 continues former Fish and Game Code Section 8275 without
36 substantive change.

CHAPTER 2. TAKE AND POSSESSION

§ 47000. Use of trawl or drag net

47000. (a) It is unlawful to take or possess more than 500 pounds of crabs on any boat on which any type of trawl or drag net is carried or operated.

Comment. Section 47000 continues former Fish and Game Code Section 8834 without substantive change.

§ 47005. Concurrent take for commercial and sport purposes

47005. No vessel may be used to take and land crab for both commercial and sport purposes in the same day.

Comment. Section 47005 continues former Fish and Game Code Section 9012(a) without change.

§ 47010. Restrictions on eligibility to take crab

47010. (a) Eligibility to take crab in waters of the state and offshore for commercial purposes may be subject to restrictions, including, but not limited to, restrictions on the number of traps utilized by that person, if either of the following occurs:

(1) A person holds a California Dungeness crab permit with California landings of less than 5,000 pounds between November 15, 2003, and July 15, 2008, inclusive, as reported in California landings receipts.

(2) A person has purchased a Dungeness crab permit on or after July 15, 2008, from a permitholder whose California landings were less than 5,000 pounds between November 15, 2003, and July 15, 2008, inclusive, as reported in California landings receipts.

(b) This section shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2020, deletes or extends the date on which this section becomes inoperative or is repealed.

Comment. Subdivision (a) of Section 47010 continues former Fish and Game Code Section 8276.4(g) without substantive change.

Subdivision (b) continues the part of former Fish and Game Code Section 8276.4(h) applicable to former Fish and Game Code Section 8276.4(g) without substantive change.

§ 47015. Crab meat and frozen crab

47015. Crab meat and frozen crab taken during the open season may be possessed, transported, and sold at any time, subject to the regulations of the commission. The cost of inspection and marking, under the regulations of the commission, shall be paid by the owner or seller of the crab or crab meat.

Comment. Section 47015 continues former Fish and Game Code Section 8281 without substantive change.

CHAPTER 3. DUNGENESS CRAB

Article 1. General Provisions

§ 47050. Provisions not exclusive

47050. The provisions of this part are not intended to be exclusive. Other provisions that govern Dungeness crab include, but are not limited to, the following provisions:

(a) Section 19205.

(b) Section 19230.

(c) Section 25125.

(d) Section 20720.

(e) Section 47450.

Comment. Section 47050 is new. It is added for drafting convenience.

§ 47055. Prohibited sale of take from specified waters

47055. It is unlawful to sell any Dungeness crab taken in any of the following waters:

(a) The Eel River and its tributaries, between the Pacific Ocean and the west line of Sec. 35, T. 3 N., R. 1 W., H. B. & M.

(b) The Pacific Ocean, within a radius of one mile from the mouth of the Eel River.

(c) Humboldt Bay, including the entrance of that bay, and the Pacific Ocean within a radius of one mile from the extreme western point of the north jetty at the entrance of the bay, and for a radius of one mile from the extreme western point of the south jetty at the entrance of the bay.

(d) Trinidad Bay, the body of water within the area enclosed by a line running southeasterly from the westernmost point of Trinidad Head to the mouth of Luftenholtz Creek.

(e) Bodega Lagoon.

Comment. Section 47055 continues former Fish and Game Code Section 8279 without substantive change.

§ 47060. Take in Crescent City Harbor area

47060. Except as provided in Section 47355, Dungeness crab may not be taken for commercial purposes in any district, or part of a district, lying within the portions of Crescent City Harbor between the south sand barrier and the breakwater.

Comment. Section 47060 continues former Fish and Game Code Section 8276(c) without substantive change.

§ 47065. Use of trawl or drag net south of Point Reyes

47065. It is unlawful for any person on a vessel on which any type of trawl or

drag net is carried or operated to take or possess Dungeness crab, or to transfer Dungeness crab to another vessel, south of a line extending due west, true, from Point Reyes.

Comment. Section 47065 continues former Fish and Game Code Section 8834.5 without substantive change.

§ 47070. Size and sex restrictions

47070. (a) Except as otherwise provided, it is unlawful to take, possess, buy, or sell a male Dungeness crab of less than six and one-quarter (6 1/4) inches in breadth, or a female Dungeness crab of any breadth.

(b) In any load or lot of Dungeness crabs, one percent or less in number may be less than six and one-quarter (6 1/4) inches and equal to or greater than five and three-quarters (5 3/4) inches in breadth.

(c) The breadth of a Dungeness crab shall be measured by the shortest distance through the body from edge of shell to edge of shell directly from front of points (lateral spines).

Comment. Section 47070 continues former Fish and Game Code Section 8278 without substantive change.

Note. Existing Fish and Game Code Section 8278 (which would be continued by proposed Section 47070) generally prohibits the take, possession, purchase, or sale, of undersized male Dungeness crabs, or female Dungeness crabs of any size, “except that not more than 1 percent in number of any load or lot of Dungeness crabs may be less than six and one-quarter (6 1/4) inches in breadth but not less than five and three-quarters (5 3/4) inches in breadth.”

Is this exception intended to include female Dungeness crabs of the specified breadth?

Article 2. Geographic Restrictions

§ 47150. Delayed opening season in District 2570, 2575, 2580, or 2585

47150. (a) If there is any delay ordered by the director in the opening of the Dungeness crab fishery in District 2570, 2575, 2580, or 2585 pursuant to Article 4 (commencing with Section 47350), a vessel shall not take or land crab within those districts during any closure.

(b) If there is any delay in the opening of the Dungeness crab season pursuant to Article 4 (commencing with Section 47350), the opening of the season in those districts shall be preceded by a 64-hour gear setting period, as ordered by the director.

Comment. Section 47150 continues former Fish and Game Code Section 8276.3(a) and (b) without substantive change.

Note. The Commission invites comment on whether the prohibition in existing Fish and Game Code Section 8276.3(a) (which would be continued by Section 47150(a)) and the requirement in Section 8276.3(b) (which would be continued by Section 47150(b)) are limited in their application to only the Dungeness crab fishery, or are intended to apply to the take of any crab in Districts 6, 7, 8, or 9.

1 **§ 47155. Ocean waters**

2 47155. (a) A person shall not take, possess onboard, or land Dungeness crab for
3 commercial purposes from a vessel in ocean waters in District 2570, 2575, 2580,
4 or 2585 for 30 days after the opening of the Dungeness crab fishing season in
5 California, if both of the following events have occurred:

6 (1) The opening of the season has been delayed pursuant to state law in
7 California.

8 (2) The same vessel was used to take, possess onboard, or land Dungeness crab
9 for commercial purposes, from ocean waters outside of District 2570, 2575, 2580,
10 or 2585, prior to the opening of the season in those districts.

11 (b) A person shall not take, possess onboard, or land Dungeness crab for
12 commercial purposes from a vessel in ocean waters south of the border between
13 Oregon and California for 30 days after the opening of the Dungeness crab fishing
14 season in California, if both of the following events have occurred:

15 (1) The opening of the season has been delayed pursuant to state law in
16 California.

17 (2) The same vessel was used to take, possess onboard, or land Dungeness crab
18 for commercial purposes in Oregon or Washington prior to the opening of the
19 season in California.

20 (c) A person shall not take, possess onboard, or land Dungeness crab for
21 commercial purposes from a vessel in ocean waters north of the border between
22 Oregon and California for 30 days after the opening of the Dungeness crab fishing
23 season in Oregon or Washington, if both of the following events have occurred:

24 (1) The opening of the season has been delayed in Oregon or Washington.

25 (2) The same vessel was used to take, possess onboard, or land Dungeness crab
26 for commercial purposes in California prior to the opening of the season in ocean
27 waters off Oregon or Washington.


28 (d) A person shall not take, possess onboard, or land Dungeness crab for
29 commercial purposes from a vessel in ocean waters off Washington, Oregon, or
30 California for 30 days after the opening of the Dungeness crab fishing season in
31 California, Oregon, or Washington, if both of the following events have occurred:

32 (1) The opening of the season has been delayed in Washington, Oregon, or
33 California.

34 (2) The same vessel was used to take, possess onboard, or land Dungeness crab
35 for commercial purposes in either of the two other states prior to the delayed
36 opening in the ocean waters off any one of the three states.

37 (e) Notwithstanding subdivision (a) of Section 4400, a violation of this section
38 does not constitute a misdemeanor. Pursuant to Section 14650, the commission
39 shall revoke the Dungeness crab vessel permit that was issued for use on the vessel
40 that was used in violation of this section.

41 **Comment.** Section 47155 continues former Fish and Game Code Section 8279.1(a)-(e)
42 without substantive change.

43  **Note.** Existing Fish and Game Code Section 8279.1(e) (which would be continued by Section

47155(e)) provides that a violation of the section “does not constitute a misdemeanor.”
Is this provision intended to provide that a violation of the section is not a crime at all?

§ 47160. Inoperative date of article

47160. This article shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2020, deletes or extends the date on which this article becomes inoperative or is repealed.

Comment. Section 47160 combines and continues former Fish and Game Code Sections 8276.3(c) and 8279.1(f) without substantive change.

Article 3. Seasons Generally

§ 47300. Seasons

47300. Except as provided in Article 4 (commencing with Section 47350):

(a) Dungeness crab may be taken for commercial purposes in District 2570, 2575, 2580, or 2585 only between December 1 and July 15.

(b) Dungeness crab may be taken for commercial purposes in all other districts only between November 15 and June 30.

Comment. Section 47300 continues former Fish and Game Code Section 8276(a) and (b) without substantive change.

§ 47305. Extension of season

47305. (a) The director may extend the Dungeness crab season in any district or part of a district, as provided in this section.

(b) Before extending a Dungeness crab season, the director shall consider written findings of the department regarding the state of the Dungeness crab resource in the district, or part of a district, which consider, but are not limited to, population and maturity. The director may extend the season only if the written findings do not conclude that the extension will damage the Dungeness crab resource.

(c) The director shall not extend the Dungeness crab season past August 31 in a district, or part thereof, north of the southern boundary of Mendocino County or past July 31 in a district, or part of a district, south of Mendocino County. The director shall order closure of the season at any time during the extension period if the director determines that further fishing will damage the Dungeness crab resource.

Comment. Section 47305 continues former Fish and Game Code Section 8277 without substantive change.

Article 4. Delayed Opening Seasons

§ 47350. Authority of director to order delay

47350. (a) In District 2570, 2575, 2580, or 2585, the director may order a delay in the opening of the Dungeness crab fishery beyond December 1 in any year, pursuant to this article.

(b) The opening shall not be delayed beyond January 15 of any year.

Comment. Section 47350 continues former Fish and Game Code Section 8276.2(a) without substantive change.

Note. Existing Fish and Game Code Section 8276.2(a) (which would be continued by proposed Section 47350) authorizes the director to delay the opening of the Dungeness crab fishery in Districts 6, 7, 8, and 9 beyond December 1 of any year. Although the authority is contained in the first subdivision of a section that is otherwise about quality testing, Section 8276.2(a) does not expressly limit the director's authority to delay the opening based on the results of that testing.

Nevertheless, it is the Commission's understanding that limitation on the director's authority is implied, and proposed Section 47350 would make that limitation express.

The Commission invites comment on whether the director's authority under existing Section 8276.2 is so limited.

§ 47355. Authority of director to order quality testing

47355. (a) On or about November 1 of each year, the director may authorize one or more operators of commercial fishing vessels to take and land a limited number of Dungeness crab, for the purpose of quality testing pursuant to a testing program conducted by, or on behalf of, the Pacific States Marine Fisheries Commission, or by an entity approved by the department.

(b) The entity authorized to conduct the approved testing program may test, or cause to be tested, crabs taken for quality and soft shells pursuant to the approved testing program.

Comment. Subdivision (a) of Section 47355 continues former Fish and Game Code Section 8276.2(b)(1) without substantive change.

Subdivision (b) continues the second sentence of former Fish and Game Code Section 8276.2(c) without substantive change.

§ 47360. Testing guidelines

47360. For purposes of the testing program, the department shall develop guidelines after consulting with representatives of the California Dungeness crab industry, which shall include California delegates to the Tri-State Dungeness Crab Commission, members of the California Dungeness Crab Task Force, or both. The guidelines shall include the following:

(a) Suggested guidelines for the management of the funds received from, but not limited to, the sale of the crab meat pursuant to Section 47370, including the suggested guideline that funds in excess of the program costs may be donated for charitable purposes.

(b) Guidelines for the testing program.

(c) Guidelines that establish measures to track crab caught for purposes of the testing program, including, but not limited to, the guideline that all crab caught and sold for the testing program shall be canned.

Comment. Section 47360 continues former Fish and Game Code Section 8276.2(b)(2)(B) without substantive change.

§ 47365. Delay in season opening in District 2570, 2575, 2580, or 2585 based on testing

47365. (a) If the quality testing authorized in Section 47355 is performed and indicates the Dungeness crabs are not soft-shelled or of low quality, the director shall order that the Dungeness crab season in District 2570, 2575, 2580, or 2585 open on December 1.

(b) If the quality testing authorized in Section 47355 is performed and results in a finding that Dungeness crabs are soft-shelled or of low quality, the director shall authorize a second test to be conducted on or about November 15, pursuant to the approved testing program.

(c) If the second test results in a finding that Dungeness crabs are soft-shelled or of low quality, the director may order the opening of the Dungeness crab season in District 2570, 2575, 2580, or 2585 delayed for a period of 15 days, and may authorize a third test to be conducted on or about December 1.

(d) If a third test results in a finding that Dungeness crabs are soft-shelled or of low quality, the director may order the opening of the Dungeness crab season in District 2570, 2575, 2580, or 2585 delayed for a period of an additional 15 days, and authorize a fourth test to be conducted.

(d) The director may continue to follow this same procedure each time a test results in a finding that Dungeness crabs are soft-shelled or of low quality, except that tests shall not be conducted after January 1 for that season, and the opening of the Dungeness crab season in District 2570, 2575, 2580, or 2585 shall not be delayed by the director beyond January 15.

Comment. Section 47365 restates the first, and third through sixth, sentences of former Fish and Game Code Section 8276.2(c), without substantive change.

Note. Proposed Section 47365 is intended to restate the first, and third through sixth, sentences of existing Fish and Game Code Section 8280.1(b)(4)(B) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“The director shall order the opening of the Dungeness crab season in Districts 6, 7, 8, and 9 on December 1 if the quality tests authorized in subdivision (b) indicate the Dungeness crabs are not soft-shelled or low quality.... If the tests are conducted on or about November 1 and result in a finding that Dungeness crabs are soft-shelled or low quality, the director shall authorize a second test to be conducted on or about November 15 pursuant to the approved testing program. If the second test results in a finding that Dungeness crabs are soft-shelled or low quality, the director may order the season opening delayed for a period of 15 days and may authorize a third test to be conducted on or about December 1. If the third test results in a finding that Dungeness crabs remain soft-shelled or of low quality, the director may order the season opening delayed for a period of an additional 15 days and authorize a fourth test to be conducted. This procedure may continue to be followed, except that tests shall not be conducted after January 1 for that season, and the season opening shall not be delayed by the director later than January 15.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of these provisions.

§ 47370. Sale of crab meat extracted for testing

47370. (a) The meat extracted from Dungeness crab tested pursuant to Section 47355 may be sold by the entity approved by the department to conduct the testing, and revenues from that sale may be used for purposes of managing the testing program.

(b) Revenues shall be deposited in an account managed and overseen by the Pacific States Marine Fisheries Commission.

Comment. Section 47370 continues former Fish and Game Code Section 8276.2(b)(2)(A) without substantive change.

§ 47375. Inoperative date of article

47375. This article shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2020, deletes or extends the date on which this article becomes inoperative or is repealed.

Comment. Section 47375 continues former Fish and Game Code Section 8276.2(d) without substantive change.

Article 5. Use of Traps Generally

§ 47450. Use of traps

47450. (a) Subject to Title 6 (commencing with Section 19200) of Part 6 of Division 6, and the provisions of this title, Dungeness crab may be taken with Dungeness crab traps.

(b) A Dungeness crab trap may have any number of openings of any size. However, every Dungeness crab trap shall have at least two rigid circular openings of not less than 4 1/4 inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap.

(c) In District 2570, 2575, 2580, or 2585, no trap shall be used to take Dungeness crab if that trap is attached to another trap or other traps by a common line.

Comment. Subdivision (a) of Section 47450 combines and continues the first sentence of former Fish and Game Code Section 8284(a) and former Fish and Game Code Section 9011(a)(1) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 9011(a)(2) without change.

Subdivision (c) continues former Fish and Game Code Section 9012(b) without substantive change.

Note. The first sentence of existing Fish and Game Code Section 8284(a) (which would be continued by proposed Section 47450(a)) provides that crab traps may be used to take Dungeness

crab for commercial purposes, “[s]ubject to” the article in the existing law in which Section 8284 appears. In the proposed law, all provisions contained in that article have been continued in the title containing proposed Section 47450(a). However, that proposed title contains several additional provisions relevant to the subject matter of Section 8284 that are *not* in the “Article 6” referenced in that section: Sections 8834, 8834.5, 9011, and 9012.

The Commission invites comment on whether the additional inclusion of these provisions in the cross-reference in proposed Section 47450(a) would cause any problems.

§ 47455. Setting and baiting of traps

47455. (a) Except as provided in subdivision (b), crab traps may be set and baited 18 hours in advance of the opening date of the Dungeness crab season, if no other attempt is made to take or possess Dungeness crab.

(b) Crab traps may be set and baited 64 hours prior to the opening date of the Dungeness crab season in District 2570, 2575, 2580, or 2585. Crab traps may be set and baited in advance of that opening date in those districts, if no other attempt is made to take or possess Dungeness crab in those districts.

Comment. Section 47455 continues former Fish and Game Code Section 8283 without substantive change.

§ 47460. Incidental take

47460. (a) Unless otherwise provided, any fish may be taken incidentally in crab traps being used to take Dungeness crab.

(b) Subject to the provisions of this title, rock crab may be taken incidentally with a Dungeness crab trap used pursuant to Section 47450 to take Dungeness crab, provided that the incidental taking occurs only during the season when it is lawful to take both species. A rock crab taken incidentally with a Dungeness crab trap in non-compliance with this subdivision shall be immediately returned to the waters from which it was taken.

Comment. Subdivision (a) of Section 47460 continues the second sentence of former Fish and Game Code Section 8284(a) without substantive change.

Subdivision (b) continues former Fish and Game Code Section 9011(a)(3) without substantive change.

Note. Existing Fish and Game Code Section 9011(a)(3) (which would be continued by proposed Section 47460(b)) provides that rock crab may be taken incidentally with a Dungeness crab trap under specified circumstances, “[s]ubject to Article 6 (commencing with Section 8275) of Chapter 2.” In the proposed law, all provisions contained in that article have been continued in the title containing proposed Section 47460. However, that proposed title contains several additional provisions relevant to the subject matter of Section 9011(a)(3) that are *not* in the “Article 6” referenced in that section: Sections 8834 and 8834.5, the other provisions in Section 9011, and Section 9012.

The Commission invites comment on whether the additional inclusion of these provisions in the cross-reference in proposed Section 47460(b) would cause any problems.

§ 47465. Report to Legislature

47465. On or before January 1, 2013, the department shall report to the appropriate policy and fiscal committees of the Legislature the impacts, if any, of

1 the changes made to this section by Chapter 478 of the Statutes of 2009. The
2 report shall include information about citations issued pursuant to this section
3 relating to both rock crab and Dungeness crab for the years 2010 to 2012,
4 inclusive.

5 **Comment.** Section 47465 continues former Fish and Game Code Section 9011(c) without
6 substantive change.

7 **Note.** The Commission invites comment on whether existing Fish and Game Code
8 Section 9011(c) (which would be continued by proposed Section 47465) is obsolete, and need
9 not be continued in the proposed law.

10 Article 6. Trap Limit Program

11 § 47600. “Council”

12 47600. For purposes of this article, “council” means the Ocean Protection
13 Council established pursuant to Section 35600 of the Public Resources Code.

14 **Comment.** Section 47600 continues former Fish and Game Code Section 8276.5(h) without
15 substantive change.

16 § 47605. Legislative declaration

17 47605. (a) It is the intent of the Legislature that the department, the council, and
18 the Dungeness crab task force work with the Pacific States Marine Fisheries
19 Commission and the Tri-state Dungeness Crab Commission to resolve any issues
20 pertaining to moving the fair start line south to the border of California and
21 Mexico.

22 (b) For the purposes of this section, the resolution of issues pertaining to the fair
23 start line shall be limited to assessing the positive and negative implications of
24 including District 2590 in the tri-state agreement, including working with the Tri-
25 state Dungeness Crab Commission to amend Oregon and Washington laws to
26 include District 2590 in the regular season fair start clause, and discussion of
27 providing different rules for District 2590 with regard to preseason quality testing.

28 **Comment.** Section 47605 continues former Fish and Game Code Section 8276.5(g) without
29 substantive change.

30 § 47610. Adoption of program

31 47610. In consultation with the Dungeness crab task force, or its appointed
32 representatives, the director shall adopt a program, by March 31, 2013, for
33 Dungeness crab trap limits for all California permits.

34 **Comment.** Section 47610 continues the first sentence of former Fish and Game Code Section
35 8276.5(a) without change.

36 **Note.** The Commission invites comment on whether existing Fish and Game Code
37 Section 8276.5(a) (which would be continued by proposed Section 47610) is obsolete, and
38 need not be continued in the proposed law.

1 **§ 47615. Program requirements**

2 47615. Unless the director finds that there is consensus in the Dungeness crab
3 industry that modifications to the following requirements are more desirable, with
4 evidence of consensus, including, but not limited to, the record of the Dungeness
5 crab task force, the program shall include all of the requirements of this article.

6 **Comment.** Section 47615 continues the second sentence of former Fish and Game Code
7 Section 8276.5(a) without substantive change.

8 **§ 47620. Tier requirements**

9 47620. (a) The program shall contain seven tiers of Dungeness crab trap limits
10 based on California landings receipts under California permits between November
11 15, 2003, and July 15, 2008, as follows:

12 (a) The 55 California permits with the highest California landings shall receive a
13 maximum allocation of 500 trap tags.

14 (2) The 55 California permits with the next highest California landings to those
15 in paragraph (1) shall receive a maximum allocation of 450 trap tags.

16 (3) The 55 California permits with the next highest California landings to those
17 in paragraph (2) shall receive a maximum allocation of 400 trap tags.

18 (4) The 55 California permits with the next highest California landings to those
19 in paragraph (3) shall receive a maximum allocation of 350 trap tags.

20 (5) The 55 California permits with the next highest California landings to those
21 in paragraph (4) shall receive a maximum allocation of 300 trap tags.

22 (6) The remaining California permits with the next highest California landings
23 to those in paragraph (5), which are not described in subdivision (a) of Section
24 47010 shall receive a maximum allocation of 250 trap tags.

25 (7) The California permits described in subdivision (a) of Section 47010 shall
26 receive a maximum allocation of 175 tags. The tags in this tier shall not be
27 transferable for the first two years of the program.

28 (b) Notwithstanding subdivision (a), the director shall not remove a
29 permit holder from a tier described in that subdivision if, after an allocation is
30 made pursuant to that subdivision, an appeal pursuant to paragraph (8) of
31 subdivision (a) of former Fish and Game Code Section 8276.5 places a
32 permit holder in a tier different than the original allocation.

33 **Comment.** Section 47620 continues former Fish and Game Code Section 8276.5(a)(1) and
34 (a)(2) without substantive change.

35 **Note.** The Commission invites comment on whether the second sentence of existing Fish
36 and Game Code Section 8276.5(a)(1)(G) (which would be continued by proposed Section
37 47620(a)(7)), indicating that tags in the described tier shall not be transferable for the first
38 two years of the Dungeness crab trap limit program, is obsolete and need not be continued
39 in the proposed law.

40 **§ 47625. Program participant requirements**

41 47625. Participants in the program shall meet all of the following requirements:

(a) Unless a participant receives a waiver pursuant to Section 47630, pay a biennial fee for each trap tag issued pursuant to this article to pay the pro rata share of costs of the program, including, but not limited to, informing permitholders of the program, collecting fees, acquiring and sending trap tags to permitholders, paying for a portion of enforcement costs, and monitoring the results of the program. The fee shall not exceed five dollars (\$5) per trap, per two-year period. All of the trap tags allocated to each permit pursuant to this article shall be purchased by the permitholder or the permit shall be void.

(b) Purchase a biennial crab trap limit permit of not more than one thousand dollars (\$1,000) per two-year period to pay for the department's reasonable regulatory costs.

(c) Not lease a crab trap tag.

(d) Transfer a tag only as part of a transaction to purchase a California permitted crab vessel.

(e) A Dungeness crab trap that is fished shall contain a trap tag that is fastened to the main buoy, and an additional tag provided by the permitholder attached to the trap. The department shall mandate the information that is required to appear on both buoy and trap tags.

Comment. Section 47625 continues former Fish and Game Code Section 8276.5(a)(3) without substantive change.

§ 47630. Fee waiver for military service

47630. (a) The department shall issue a participant a waiver from the biennial fee for each trap tag described in subdivision (a) of Section 47625 if the participant is unable to fish due to mandatory military service and the participant submits a request for a waiver to the department at the same time that the participant renews the permit issued pursuant to subdivision (b) of Section 47625.

(b) A participant who receives a waiver pursuant to this section shall not apply to the department to fish for Dungeness crab during the first year of the waiver, but may apply to fish for Dungeness crab during the second year of the waiver if the participant pays the full cost of the biennial fee for each trap tag.

(c) The department shall not limit the number of times a participant may request a waiver.

Comment. Section 47630 continues former Fish and Game Code Section 8276.5(a)(4) without substantive change.

§ 47635. Transit with valid out-of-state tags

47635. Notwithstanding subdivision (e) of Section 47625, a vessel may transit state waters with Dungeness crab traps that are not tagged pursuant to subdivision (e) of Section 47625 if the traps contain either a valid Oregon or Washington trap tag, no crab species are onboard the vessel, and the traps are not deployed in state waters.

Comment. Section 47635 continues former Fish and Game Code Section 8276.5(a)(5) without

substantive change.

§ 47640. Department accounting

47640. The department shall annually provide an accounting of all costs associated with the crab trap limit program. The department shall use excess funds collected to reduce the cost of the crab trap limit permit fee or tag fee in subsequent years of the program.

Comment. Section 47640 continues former Fish and Game Code Section 8276.5(a)(6) without substantive change.

§ 47645. Lost tags

47645. Permitholders may replace lost tags by application to the department, and payment of a fee not to exceed the reasonable costs incurred by the department, which may be waived or reduced by the department in the case of catastrophic loss of tags.

Comment. Section 47645 continues former Fish and Game Code Section 8276.5(a)(7) without substantive change.

Note. Existing Fish and Game Code Section 8276.5(a)(8) relates to the appeal by a Dungeness crab permitholder of a trap tag allocation, an appeal that the provision indicates must have been submitted to the director by March 31, 2014. Based on that requirement, existing Section 8276.5(a)(8) has not been continued in the proposed law.

The Commission invites comment on whether Section 8276.5(a)(8) should be continued in the proposed law.

§ 47650. Violation of program requirement

47650. (a) In addition to criminal penalties authorized by law, a violation of the requirements of the program shall be subject to the following civil penalties:

(1) Conviction of a first offense shall result in a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) per illegal trap or fraudulent tag.

(2) Conviction of a second offense shall result in a fine of not less than five hundred dollars (\$500) and not more than two thousand five hundred dollars (\$2,500) per illegal trap or fraudulent tag, and the permit may be suspended for one year.

(3) Conviction of a third offense shall result in a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) per illegal trap or fraudulent tag, and the permit may be permanently revoked.

(b) The severity of a penalty within the ranges described in subdivision (a) shall be based on a determination whether the violation was willful or negligent and other factors.

(c) The portion of monetary judgments for noncompliance that are paid to the department shall be deposited in the Dungeness Crab Account created pursuant to subdivision (a) of Section 47660.

Comment. Section 47650 continues former Fish and Game Code Section 8276.5(b) without

substantive change.

§ 47655. Submission of proposed program to task force

47655. (a) The director shall submit a proposed program pursuant to this section to the Dungeness crab task force for review, and shall not implement the program until the task force has had 60 days or more to review the proposed program and recommend any proposed changes.

(b) The director may implement the program earlier than 60 days after it is submitted to the Dungeness crab task force for review, if recommended by the task force.

(c) After the program is implemented, the director may modify the program, if consistent with the requirements of this article, after consultation with the Dungeness crab task force or its representatives, and after the task force has had 60 days or more to review the proposed modifications and recommend any proposed changes.

(d) The director may implement the modifications earlier than 60 days after it is sent to the Dungeness crab task force for review, if recommended by the task force.

Comment. Section 47655 continues former Fish and Game Code Section 8276.5(d) without substantive change.

§ 47660. Dungeness Crab Account

47660. (a) The Dungeness Crab Account is hereby established in the Fish and Game Preservation Fund, and the fees collected pursuant to this article shall be deposited in that account. The money in the account shall be used by the department, upon appropriation by the Legislature, for administering and enforcing the program.

(b) For purposes of meeting the necessary expenses of initial organization and operation of the program until fees may be collected, or other funding sources may be received, the department may borrow money as needed for these expenses from the council. The borrowed money shall be repaid within one year from the fees collected or other funding sources received. The council shall give high priority to providing funds or services to the department, in addition to loans, to assist in the development of the program, including, but not limited to, the costs of convening the Dungeness crab task force, environmental review, and the department's costs of attending meetings with task force members.

Comment. Section 47660 continues former Fish and Game Code Section 8276.5(e) and (f) without substantive change.

§ 47665. Inoperative date of article

47665. This article shall become inoperative on April 1, 2019, and, as of January 1, 2020, is repealed, unless a later enacted statute that becomes operative on or

1 before January 1, 2020, deletes or extends the date on which this article becomes
2 inoperative or is repealed.

3 **Comment.** Section 47665 continues former Fish and Game Code Section 8276.5(i) without
4 substantive change.

5 Article 7. Dungeness Crab Task Force

6 § 47800. Creation of task force

7 47800. The Ocean Protection Council shall make a grant, upon appropriation of
8 funding by the Legislature, for the development and administration of a
9 Dungeness crab task force.

10 **Comment.** Section 47800 continues the first sentence of former Fish and Game Code Section
11 8276.4(a) without change.

12 § 47805. Task force membership

13 47805. The membership of the Dungeness crab task force shall be comprised of
14 all of the following:

- 15 (a) Two members representing sport fishing interests.
- 16 (b) Two members representing crab processing interests.
- 17 (c) One member representing commercial passenger fishing vessel interests.
- 18 (d) Two nonvoting members representing nongovernmental organization
19 interests.
- 20 (e) One nonvoting representative of Sea Grant.
- 21 (f) Two nonvoting members representing the department.
- 22 (g) Seventeen members representing commercial fishery interests, elected by
23 licensed persons possessing valid Dungeness crab permits in their respective ports
24 and production levels, as follows:
 - 25 (1) Four members from Crescent City.
 - 26 (2) One member from Trinidad.
 - 27 (3) Two members from Eureka.
 - 28 (4) Two members from Fort Bragg.
 - 29 (5) Two members from Bodega Bay.
 - 30 (6) Two members from San Francisco.
 - 31 (7) Two members from Half Moon Bay.
 - 32 (8) One member from ports south of Half Moon Bay.
 - 33 (9) One member who has a valid California nonresident crab permit.

34 **Comment.** Section 47805 combines and continues the second sentence of former Fish and
35 Game Code Section 8276.4(a), and former Fish and Game Code Section 8276.4(a)(1)-(7), without
36 substantive change.

1 **§ 47810. Ports with multiple representatives**

2 47810. (a) For ports with more than one representative, elected members and
3 their alternates shall represent both the upper and lower, and in some cases middle,
4 production levels.

5 (b) Production levels shall be based on the average landing during the previous
6 five years, of valid crab permitholders who landed a minimum of 25,000 pounds
7 of crab during the same period.

8 **Comment.** Section 47810 continues former Fish and Game Code Section 8276.4(b) without
9 substantive change.

10 **§ 47815. Responsibilities of task force**

11 47815. The Dungeness crab task force shall do all of the following:

12 (a) Review and evaluate the Dungeness crab management measures described in
13 Article 6 (commencing with Section 47600), with initial recommendations to the
14 Joint Committee on Fisheries and Aquaculture, the department, and the
15 commission, no later than January 15, 2015, and final recommendations to those
16 entities no later than January 15, 2017.

17 (b) Make recommendations by January 15, 2015, on all of the following: the
18 need for a permanent Dungeness crab advisory committee, the economic impact of
19 the program described in Article 6 (commencing with Section 47600) on
20 permitholders of different tiers and the economies of different ports, the cost of the
21 program to the department, including enforcement costs, the viability of a buyout
22 program for the permitholders described in paragraph (7) of subdivision (a) of
23 Section 47620, refining sport and commercial Dungeness crab management, and
24 the need for statutory changes to accomplish task force objectives.

25 (c) In considering Dungeness crab management options, prioritize the review of
26 pot limit restriction options, current and future sport and commercial fishery
27 effort, season modifications, essential fishery information needs, and short- and
28 long-term objectives for improved management.

29 **Comment.** Section 47815 continues former Fish and Game Code Section 8276.4(c) without
30 substantive change.

31 **§ 47820. Subcommittees**

32 47820. (a) The task force may establish subcommittees of specific user groups
33 from the task force membership to focus on issues specific to sport fishing,
34 commercial harvest, or crab processing.

35 (b) The subcommittees shall report their recommendations, if any, to the task
36 force.

37 **Comment.** Section 47820 continues former Fish and Game Code Section 8276.4(d) without
38 substantive change.

1 **§ 47825. Grant to cover costs**

2 47825. The Ocean Protection Council may include in a grant funding to cover
3 department staffing costs, as well as travel costs for task force participants
4 specified in subdivision (f) of Section 47805.

5 **Comment.** Section 47825 continues former Fish and Game Code Section 8276.4(e) without
6 substantive change.

7 **§ 47830. Task force recommendations**

8 47830. (a) Except as otherwise provided in this article and Article 6
9 (commencing with Section 47600), a recommendation shall be forwarded to the
10 Joint Committee on Fisheries and Aquaculture, the department, and the
11 commission upon an affirmative vote of at least two-thirds of the task force
12 members.

13 (b) For the purposes of this article and Article 6 (commencing with Section
14 47600), a proposed recommendation that receives an affirmative vote of at least 15
15 of the non-ex officio members of the Dungeness crab task force may be
16 transmitted to the director or the Legislature as a recommendation, shall be
17 considered to be the consensus of the task force, and shall be considered to be
18 evidence of consensus in the Dungeness crab industry. Any proposed
19 recommendation that does not receive a vote sufficient to authorize transmittal to
20 the director or Legislature as a recommendation shall be evidence of a lack of
21 consensus by the Dungeness crab task force, and shall be considered to be
22 evidence of a lack of consensus in the crab industry.

23 **Comment.** Subdivision (a) of Section 47830 continues former Fish and Game Code Section
24 8276.4(f) without substantive change.

25 Subdivision (b) continues former Fish and Game Code Section 8276.5(c) without substantive
26 change.

27 **§ 47835. Inoperative date of article**

28 47835. This article shall become inoperative on April 1, 2019, and, as of January
29 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
30 before January 1, 2020, deletes or extends the date on which this article becomes
31 inoperative or is repealed.

32 **Comment.** Section 47835 continues former Fish and Game Code Section 8276.4(h) without
33 substantive change.

34 CHAPTER 4. DUNGENESS CRAB VESSEL PERMITS

35 Article 1. General Provisions

36 **§ 47900. Permit requirement**

37 47900. A person shall not use a vessel to take, possess, or land Dungeness crab
38 for commercial purposes using Dungeness crab traps authorized pursuant to

1 Section 47450, unless the owner of that vessel has a Dungeness crab vessel permit
2 for that vessel that has not been suspended or revoked.

3 **Comment.** Section 47900 continues former Fish and Game Code Section 8280.1(a) without
4 substantive change.

5 **§ 47905. Taking or landing without permit**

6 47905. The commission may revoke the commercial fishing license issued
7 pursuant to Section 14550 of any person owning a fishing vessel engaging in the
8 taking or landing of Dungeness crab by traps for which that person has not
9 obtained a Dungeness crab vessel permit, and the commission may revoke the
10 registration, issued pursuant to Section 14755, for that vessel.

11 **Comment.** Section 47905 continues former Fish and Game Code Section 8280.4(a) without
12 substantive change.

13 **§ 47910. Fees for permit**

14 47910. The department shall charge a fee for each Dungeness crab vessel permit
15 of two hundred dollars (\$200) for a resident of California, and four hundred
16 dollars (\$400) for a nonresident of California, for the reasonable regulatory costs
17 of the department.

18 **Comment.** Section 47910 continues former Fish and Game Code Section 8280.6(a) without
19 substantive change.

20 **§ 47915. Retaining eligibility for permit**

21 47915. (a) In order for a vessel to retain eligibility, a permit shall be obtained
22 each year subsequent to the initial permit year and the vessel shall be registered
23 pursuant to Section 14755.

24 (b) The vessel owner shall have a valid commercial fishing license issued to that
25 person pursuant to Section 14550 that has not been suspended or revoked.

26 (c) Minimum landings of Dungeness crab shall not be required annually to be
27 eligible for a Dungeness crab vessel permit.

28 **Comment.** Section 47915 continues the second through fourth sentences of former Fish and
29 Game Code Section 8280.2(e) without substantive change.

30 **§ 47920. Due date for application**

31 47920. Applications for renewal of all Dungeness crab vessel permits shall be
32 received by the department, or, if mailed, postmarked, by April 30 of each year.

33 **Comment.** Section 47920 continues the first sentence of former Fish and Game Code Section
34 8280.2(e) without substantive change.

35 **§ 47925. Permitted persons**

36 47925. (a) A Dungeness crab vessel permit shall be issued only to the person
37 owning the vessel at the time of application for that permit. A person shall not be
38 issued more than one permit for each vessel owned by that person and qualifying
39 for a permit pursuant to Article 2 (commencing with Section 48100).

(b) A Dungeness crab vessel permit shall be issued only to the owner of a vessel taking crab by traps. A permit shall not be issued to the owner of a vessel using trawl or other nets unless the owner of that vessel qualifies for a permit pursuant to paragraph (1) of subdivision (a) of Section 48105. A trawl or other net vessel authorized under this code to take Dungeness crab incidental to the taking of fish in trawl or other nets shall not be required to possess a Dungeness crab vessel permit.

(c) The owner of a Dungeness crab vessel, for purposes of this section, may include a person with a bona fide contract for the purchase of a vessel who otherwise meets all other qualifications for a Dungeness crab vessel permit. If a contract is found to be fraudulent or written or entered into for the purposes of circumventing qualification criteria for the issuance of a permit, the applicant shall be permanently ineligible for a Dungeness crab vessel permit.

(d) Dungeness crab vessel permits shall not be combined or otherwise aggregated for the purpose of replacing smaller vessels in the fishery with a larger vessel, and a permit shall not be divided or otherwise separated for the purpose of replacing a vessel in the fishery with two or more smaller vessels.

Comment. Section 47925 continues former Fish and Game Code Section 8280.2(a)-(d) without substantive change.

§ 47930. Submission of false information

47930. If a person submits false information for the purposes of obtaining a Dungeness crab vessel permit under this chapter, the department shall revoke all of the following privileges:

(a) The person's Dungeness crab vessel permit, if issued.

(b) The person's commercial fishing license issued pursuant to Section 14500, for a period of not less than five years.

(c) The commercial boat registration of any vessel registered to that person pursuant to Section 14755 of which that person is the owner, for a period of not less than five years.

Comment. Section 47930 continues former Fish and Game Code Section 8280.1(g)(1) without substantive change.

§ 47935. Additional penalty for fishing without permit

47935. In addition to criminal penalties authorized by law, a person who fishes without a Dungeness crab vessel permit, or who uses a Dungeness crab vessel permit to fish illegally on another vessel other than the permitted one, shall be subject to a fine not more than twenty thousand dollars (\$20,000) and, at the discretion of the department, revocation of the person's fishing license for a period not to exceed five years, and revocation of the person's commercial boat registration license, for a period not to exceed five years.

Comment. Section 47935 continues former Fish and Game Code Section 8280.1(g)(2) without substantive change.

1 **§ 47940. Review panel**

2 47940. (a) The director shall convene a Dungeness crab review panel for the
3 purpose of reviewing applications for Dungeness crab vessel permits pursuant to
4 Section 48105, 48115, 48120, or 48125, and applications for permit transfers
5 pursuant to Article 3 (commencing with Section 48300), if the department
6 determines that the additional review and advice of the panel will be helpful in
7 deciding whether to issue a permit or approve a transfer.

8 (b) The panel shall consist of one nonvoting representative of the department,
9 and three public voting members selected by the director to represent the
10 Dungeness crab fishing industry. One public member shall be licensed pursuant to
11 Chapter 1 (commencing with Section 20200) of Title 9 of Part 6 of Division 6 or
12 Chapter 2 (commencing with Section 20300) of Title 9 of Part 6 of Division 6, and
13 active in Dungeness crab processing in this state. Two public members shall be
14 licensed pursuant to Section 14550 and active in the taking and landing of
15 Dungeness crab in this state, one of which shall be from Sonoma County or a
16 county south of Sonoma County, and one of which shall be from Mendocino
17 County or a county north of Mendocino County.

18 (c) The public members shall be reimbursed for their necessary and proper
19 expenses to participate on the panel.

20 (d) A public member shall serve on the panel for not more than four consecutive
21 years.

22 (e) The panel may conduct its review of applications referred to it by mail or
23 teleconference.

24 (f) The panel shall review each application for a permit or permit transfer
25 referred to it by the department, and shall consider all oral and written evidence
26 presented by the applicant that is pertinent to the application under review. If the
27 panel recommends issuance of a permit or approval of the transfer, the department
28 may issue a Dungeness crab vessel permit pursuant to Article 2 (commencing with
29 Section 48100) or approve a permit transfer pursuant to Article 3 (commencing
30 with Section 48300).

31 (g) All appeals of denials of Dungeness crab vessel permits shall be made to the
32 commission, and may be heard by the commission, if the appeal of denial is filed
33 in writing with the commission not later than 90 days from the date of a permit
34 denial. The commission may order the department to issue a permit upon appeal if
35 the commission finds that the appellant qualified for a permit under this chapter.

36 **Comment.** Section 47940 continues former Fish and Game Code Section 8280.5(a)-(e)
37 without substantive change.

38 **§ 47945. Inoperative date of article**

39 47945. This article shall become inoperative on April 1, 2019, and, as of January
40 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
41 before January 1, 2020, deletes or extends the date on which this article becomes
42 inoperative or is repealed.

Comment. Section 47945 combines and continues former Fish and Game Code Sections 8280.1(h), 8280.2(f), 8280.4(b), 8280.5(f), and 8280.6(d), without substantive change.

Article 2. Eligibility for Permit

§ 48100. Valid commercial license

48100. Except as otherwise provided in this article, a Dungeness crab vessel permit may be issued for use on qualifying vessels, only if the permittee has a commercial fishing license issued pursuant to Section 14550 that has not been suspended or revoked, and meets the requirements of one or more of the following sections:

(a) Section 48105.

(b) Section 48110.

(c) Section 48115.

(c) Section 48120.

(c) Section 48125.

(c) Section 48130.

(c) Section 48135.

Comment. Section 48100 continues former Fish and Game Code Sections 8280.1(b) and (d) without substantive change.

§ 48105. Eligibility based on prior landings

48105. (a) Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to the owner of a commercial fishing vessel that has been registered pursuant to Section 14755 in each of the 1991–92, 1992–93, and 1993–94 permit years, if the requirements of either of the following paragraphs are satisfied:

(1) A minimum of four landings were made from that vessel in each of three Dungeness crab seasons from November 1, 1984, to April 1, 1994. Eligibility pursuant to this paragraph includes a person purchasing a vessel qualifying pursuant to this paragraph.

(2) A minimum of four landings were made from that vessel in this state, and documented by landing receipts delivered to the department pursuant to Section 21150, in one Dungeness crab season from November 1, 1984, to April 1, 1994, and the department finds that the owner, despite a good faith intention to do so, was unable to make four landings in each of two of the previous three Dungeness crab seasons, due to illness, injury or other hardship.

(b) A permit may be issued under this section to a person whose commercial fishing license was issued pursuant to Chapter 1 (commencing with Section 20200) of Title 9 of Part 6 of Division 6 or Chapter 2 (commencing with Section 20300) of Title 9 of Part 6 of Division 6, and not pursuant to Section 14550.

Comment. Section 48105 combines and restates former Fish and Game Code Section 8280.1(b)(1) and (b)(2) without substantive change.

Notes. (1) Proposed Section 48105 is intended to combine and restate existing Fish and Game Code Section 8280.1(b)(1) and (b)(2) to clarify the meaning of those paragraphs, without changing their substantive effect. The existing paragraphs read as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

(1) A person, who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel. This paragraph includes any person purchasing a vessel qualifying pursuant to this paragraph.

(2) A person who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked, who is the owner of a commercial fishing vessel that has been registered with the department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and a minimum of four landings in one of the Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, have been made from that vessel in this state as documented by landing receipts delivered to the department pursuant to Section 8046, who the department finds to have been unable, due to illness or injury or any other hardship, to make a minimum of four landings in each of two of the previous three Dungeness crab seasons, and who, in good faith, intended to participate in the Dungeness crab fishery in those seasons.”

The Commission invites comment on whether the restatement of these paragraphs would cause any substantive change in their meaning.

(2) Existing Fish and Game Code Section 8280.1(b)(1) and (b)(2) both alternatively authorize the issuance of a Dungeness crab vessel permit to a person “who has a commercial fishing license issued pursuant to Section 7852 or Article 7 (commencing with Section 8030) of Chapter 1 that has not been suspended or revoked.” (Emphasis added.)

The Commission is unaware of a “commercial fishing license” that can currently be issued pursuant to “Article 7 (commencing with Section 8030) of Chapter 1” [of Part 3 of Division 6] of the existing code. Moreover, existing Fish and Game Code Section 8280.1(d) provides (with emphasis added):

“A person shall not be issued a Dungeness crab vessel permit under this section for any vessel unless that person has a valid commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked.”

The Commission invites comment on how to resolve this apparent discrepancy.

(3) Neither existing Section 8280.1(b)(1) nor (b)(2) explicitly require that the permit sought pursuant to either of those provisions must be placed on the vessel described in either provision that provided the basis for permit eligibility. Cf. existing Section 8280.1(b)(6) (requiring permit sought pursuant to that subdivision “to be placed on a vessel that the person purchases or contracts for construction on or before April 1, 1996”).

The Commission invites comment on whether a permit obtained pursuant to either Section 8280.1(b)(1) or (b)(2) must be placed on the vessel that provided the basis for eligibility under either of those provisions, and if so whether proposed Section 48105 should expressly state that requirement.

(4) Qualification for a permit under existing Section 8280.1(b)(2) (as well as Section 8280.1(b)(3), (b)(5), and (b)(6)) requires that the landings needed for permit eligibility must be “documented by landing receipts delivered to the department pursuant to Section 8046.” Qualification for a permit under existing Section 8280.1(b)(1) (as well as existing Section 8280.1(b)(4)) does not expressly include that documentation requirement.

The Commission invites comment on whether this requirement, or the expression of this requirement, should be standardized among all Dungeness crab permit eligibility

provisions.

§ 48110. Eligibility based on historic participation in fishery

48110. (a) Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to the owner of a fishing vessel that has been registered pursuant to Section 14755 in each of the 1991–92, 1992–93, and 1993–94 permit years and is not equipped for trawling with a net, if the owner satisfies the following additional requirements:

(1) The owner meets the requirements of Section 22500.

(2) The owner made not less than four landings of Dungeness crab taken in a crab trap in a Dungeness crab season on or before March 31, 1994, as documented by landing receipts prepared in that person’s name that were delivered to the department pursuant to Section 21150.

(3) The owner has not been issued a permit for another vessel pursuant to any other section of this article.

(b) The department shall separately identify permits issued pursuant to this section, and those permits shall become immediately null and void upon the death of the permittee.

(c) The department shall not issue or renew any permit under this section if the applicant or permittee failed to meet the participation requirements of four landings in a Dungeness crab season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel under any other section of this article.

(d) Not more than one Dungeness crab vessel permit shall be issued to any person pursuant to this section.

(e) Notwithstanding Article 3 (commencing with Section 48100), all permits issued pursuant to this section shall be nontransferable.

Comment. Section 48110 restates former Fish and Game Code Section 8280.1(b)(3) without substantive change.

Notes. (1) Proposed Section 48110 is intended to restate existing Fish and Game Code Section 8280.1(b)(3) to clarify the meaning of that paragraph, without changing its substantive effect. The existing paragraph reads as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

....

(3) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets the requirements of Section 8101, and who, notwithstanding Section 8101, is, at the time of application, the owner of a fishing vessel that is not equipped for trawling with a net and that has been registered pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years. Not more than one Dungeness crab vessel permit shall be issued to any person qualifying under Section 8101 and all permits issued under Section 8101, notwithstanding subdivision (b) of Section 8280.3, shall be nontransferable. A person qualifying for a permit under this paragraph shall have participated in the Dungeness crab fishery on or before March 31, 1994, as documented by landing receipts that were prepared in that person’s name for not less than four landings of Dungeness crab taken in a crab trap in a Dungeness crab season and were delivered to the department pursuant to Section 8046. A person shall not be issued a permit under this paragraph if that person has been issued a permit under any

other provision of this section for another vessel. For purposes of Section 8101, “participated in the fishery” means made not less than four landings of Dungeness crab taken by traps in that person’s name in one Dungeness crab season. The department shall separately identify permits issued pursuant to this paragraph and those permits shall become immediately null and void upon the death of the permittee. The department shall not issue or renew any permit under this paragraph to a person if the person failed to meet the participation requirements of four landings in one season prior to April 1, 1994, or has been issued a Dungeness crab permit for a vessel under any other paragraph of this subdivision.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(3).

(2) The text at the beginning of existing Section 8280.1(b)(3), providing both that the permit applicant must “[meet] the requirements of Section 8101,” and satisfy other requirements “notwithstanding Section 8101,” is substantially confusing. Is the latter reference intended to be an exception to the requirements of Section 8101 that otherwise would have to be met, or is it meant to refer to some requirement beyond what is required by Section 8101?

The Commission invites comment clarifying the intent of this statutory language.

§ 48115. Eligibility based on work on another vessel

48115. Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to the owner of a vessel that has been registered pursuant to Section 14755 in each of the 1991–92, 1992–93, and 1993–94 permit years, and satisfies the following additional requirements:

(a) The owner held a Dungeness crab permit issued pursuant to former Fish and Game Code Section 8280 as it read on April 1, 1994.

(b) The owner participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994.

(c) The owner did not make, or department records do not indicate that the owner made, a minimum of four landings per season for three Dungeness crab seasons from that vessel, or in the owner’s name, because the owner was working aboard another vessel engaged in the Dungeness crab fishery in California, pursuant to a partnership or other working arrangement.

Comment. Section 48115 restates former Fish and Game Code Section 8280.1(b)(4)(A) without substantive change.

Notes. (1) Proposed Section 48115 is intended to restate existing Fish and Game Code Section 8280.1(b)(4)(A) to clarify the meaning of that subparagraph, without changing its substantive effect. The existing subparagraph reads as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

....

(4) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets one of the following conditions:

(A) The person held a Dungeness crab permit issued pursuant to Section 8280 as it read on April 1, 1994, and participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994, and is the owner of a vessel that has been registered with the department in each of the 1991–92, 1992–93, and 1993–94 permit years but did not make landings or the department records do not indicate a minimum of four landings per season for three Dungeness crab seasons from that vessel or in that person’s name because of a partnership or other working arrangement where the person was working aboard another vessel engaged in the Dungeness crab fishery in

California.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(4)(A).

(2) The last part of existing Section 8280.1(b)(4)(A) (which would be continued by proposed Section 48115(c)) requires, as a condition of permit eligibility pursuant to that paragraph, that the applicant “did not make landings or the department records do not indicate a minimum of four landings per season for three Dungeness crab seasons from that vessel or in that person’s name because of a partnership or other working arrangement where the person was working aboard another vessel engaged in the Dungeness crab fishery in California.” (Emphasis added.) The Commission has the following questions about this requirement:

(a) Does the non-owned vessel that the applicant was working aboard that prevented the applicant from making a minimum of four landings in three prior crab seasons have to have made those landings? If not, how is it established that the applicant was unable to make the required landings because the applicant was working aboard another vessel?

(b) Do the three prior crab seasons in which the applicant was unable to make the minimum number of required landings have to be on or before to April 1, 1994, and/or on or after November 1, 1984, as is required by existing Section 8280.1(b)(1), (b)(2), (b)(4)(B), (b)(5), and (b)(6)?

The Commission invites comment on these issues.

§ 48120. Eligibility based on specialized landings

48120. Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to the owner of a vessel that has been registered pursuant to Section 14755 in each of the 1991–92, 1992–93, and 1993–94 permit years, if the following requirements are satisfied:

(a) The owner held a Dungeness crab permit issued pursuant to former Fish and Game Code Section 8280 as it read on April 1, 1994.

(b) The owner participated in the Dungeness crab fishery between November 1, 1984, and April 1, 1994.

(c) A minimum of four landings utilizing traps were made from that vessel in at least one Dungeness crab season from November 1, 1984, and April 1, 1994.

(d) In each of two other Dungeness crab seasons in that same period, landings using traps were made from that vessel, as documented by landing receipts, that satisfy one of the following requirements:

(1) A minimum of four landings were made.

(2) Landings in excess of 10,000 pounds were made.

Comment. Section 48120 restates former Fish and Game Code Section 8280.1(b)(4)(B) without substantive change.

Note. Proposed Section 48120 is intended to restate existing Fish and Game Code Section 8280.1(b)(4)(B) to clarify the meaning of that subparagraph, without changing its substantive effect. The existing subparagraph reads as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

....

(4) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets one of the following conditions:

....

(B) The person held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, and is the owner of a commercial fishing vessel that has been registered with the

department pursuant to Section 7881 in each of the 1991–92, 1992–93, and 1993–94 permit years and from which a minimum of four landings utilizing traps were made in at least one Dungeness crab season in the period between November 1, 1984, and April 1, 1994, and from which either four landings were made utilizing traps or landings in excess of 10,000 pounds were made utilizing traps in each of two other Dungeness crab seasons in that same period, as documented by landing receipts.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(4)(B).

§ 48125. Eligibility based on hardship due to nonresidency

48125. Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to a person who satisfies all of the following requirements:

(a) The person held a Dungeness crab permit issued pursuant to former Fish and Game Code Section 8280 as it read on April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Chapter 1 (commencing with Section 20200) of Title 9 of Part 6 of Division 6 or Chapter 2 (commencing with Section 20300) of Title 9 of Part 6 of Division 6, as of April 1, 1994.

(b) The person began construction or reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the California Dungeness crab fishery, including purchase of equipment and gear.

(c) The person intended in good faith to thereafter participate in the California Dungeness crab fishery.

(d) A denial of a permit would create a financial hardship on the person.

(e) For purposes of determining financial hardship, the applicant is a nonresident, and cannot participate with his or her vessel or vessels in the Dungeness crab fishery of another state, because of that state’s limited entry or moratorium on the issuance of permits for the taking of Dungeness crab.

Comment. Section 48125 restates former Fish and Game Code Section 8280.1(b)(4)(C) without substantive change.

Notes. (1) Proposed Section 48125 is intended to restate existing Fish and Game Code Section 8280.1(b)(4)(C) to clarify the meaning of that subparagraph, without changing its substantive effect. The existing subparagraph reads as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

....

(4) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who meets one of the following conditions:

....

(C) The person held a Dungeness crab vessel permit issued under Section 8280 as it read on April 1, 1994, or was an officer in a California corporation that was licensed pursuant to Article 7 (commencing with Section 8030) of Chapter 1 as of April 1, 1994, and began construction or reconstruction of a vessel on or before January 1, 1992, for the purpose of engaging in the Dungeness crab fishery, including the purchase of equipment and gear to engage in that fishery in California. A person may be issued a permit under this condition only if the person intended in good faith to participate in the California Dungeness crab fishery, a denial of a permit would create a financial hardship on that person, and, for purposes of determining financial hardship, the applicant is a nonresident and cannot participate with his or her vessel or vessels in the

Dungeness crab fishery of another state because of that state's limited entry or moratorium on the issuance of permits for the taking of Dungeness crab."

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(4)(C).

(2) The last part of existing Section 8280.1(b)(4)(C) (which would be continued by proposed Section 48125(d) and (e)) requires, as a condition of permit eligibility pursuant to that paragraph, that "a denial of a permit would create a financial hardship on that person, and, for purposes of determining financial hardship, the applicant is a nonresident and cannot participate with his or her vessel or vessels in the Dungeness crab fishery of another state because of that state's limited entry or moratorium on the issuance of permits for the taking of Dungeness crab. The Commission has the following questions about this requirement:

(a) Is the nonresidency described in this provision an essential prerequisite to establishing the financial hardship required by this provision, or can a resident applicant establish that denial of a permit would cause financial hardship, for reasons other than the described nonresidency?

(b) If an applicant establishes the nonresidency described in this provision, is that fact by itself sufficient to establish the financial hardship required by the provision, or must this nonresident additionally establish that a denial of a permit would cause that particular applicant financial hardship?

The Commission invites comment on these issues.

§ 48130. Eligibility based on continuous ownership of participating vessel

48130. (a) Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to a person who satisfies all of the following requirements:

(1) The person held a Dungeness crab permit issued pursuant to former Fish and Game Code Section 8280 as it read on April 1, 1994.

(2) The person made a minimum of four landings of Dungeness crab taken by traps in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, in his or her name, in this state, from a vessel owned by that person, as documented by landing receipts.

(3) Between April 1, 1991, and January 1, 1995, the person purchased, contracted to purchase, or constructed a vessel that does not otherwise qualify for a Dungeness crab vessel permit pursuant to Section 48105, 48115, 48120, or 48125.

(4) The person has continuously owned that vessel since its purchase or construction.

(5) The person satisfies either of the following requirements:

(A) The person used that vessel to take Dungeness crab in this state on or before March 31, 1995, as documented by one or more landing receipts delivered to the department pursuant to Section 21150.

(B) The person intended in good faith, based on evidence that the department and the review panel may require, including investment in crab gear, to enter that vessel in this state's Dungeness crab fishery not later than December 1, 1995.

(b) Not more than one permit may be issued to any one person under this section.

Comment. Section 48130 restates former Fish and Game Code Section 8280.1(b)(5) without substantive change.

Note. Proposed Section 48130 is intended to restate existing Fish and Game Code Section 8280.1(b)(5) to clarify the meaning of that paragraph, without changing its substantive effect. The existing paragraph reads as follows:

“(b) A Dungeness crab vessel permit may be issued only to the following persons for use on qualifying vessels:

....

(5) A person who has a commercial fishing license issued pursuant to Section 7852 that has not been suspended or revoked, who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings of Dungeness crab taken by traps in each of three Dungeness crab seasons in the period from November 1, 1984, to April 1, 1994, in his or her name in this state from a vessel owned by that person, as documented by landing receipts, who, between April 1, 1991, and January 1, 1995, purchased, contracted to purchase, or constructed a vessel, not otherwise qualifying pursuant to paragraph (1), (2), or (4), who has continuously owned that vessel since its purchase or construction, and who either (A) has used that vessel for the taking of Dungeness crab in this state on or before March 31, 1995, as documented by one or more landing receipts delivered to the department pursuant to Section 8046, or (B) intended in good faith, based on evidence that the department and the review panel may require, including investment in crab gear, to enter that vessel in this state’s Dungeness crab fishery not later than December 1, 1995. Not more than one permit may be issued to any one person under this paragraph.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(5).

§ 48135. Eligibility based on vessel of limited size

48135. (a) Pursuant to Section 48100, a Dungeness crab vessel permit may be issued to a person if all of the following requirements are satisfied:

(1) The person held a Dungeness crab permit issued pursuant to former Fish and Game Code Section 8280 as it read on April 1, 1994.

(2) The person made a minimum of four landings utilizing traps in this state in each of three Dungeness crab seasons from November 1, 1984, and April 1, 1994, in his or her name, as documented by landing receipts, from a vessel operated by that person.

(3) The person currently does not own a vessel in his or her name.

(4) The person has not sold or transferred a vessel otherwise qualifying for a permit under this section.

(5) The vessel on which the permit would be placed is not greater in size than the vessel from which the previous landings were made.

(6) The vessel is no more than 60 feet in overall length.

(7) The vessel was purchased or contracted for construction by the person on or before April 1, 1996.

(b) A permit issued under this section is nontransferable, shall not be used for a vessel not owned by that person, and shall be revoked if any of the following circumstances occur:

(1) The person fails to renew the permit.

(2) The person fails to annually renew his or her commercial fishing license issued pursuant to Section 14550.

(3) The person is or becomes the owner of another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.

Comment. Section 48135 restates former Fish and Game Code Section 8280.1(b)(6) without substantive change.

Notes. (1) Proposed Section 48135 is intended to restate existing Fish and Game Code Section 8280.1(b)(6) to clarify the meaning of that paragraph, without changing its substantive effect. The existing paragraph reads as follows:

“A person who held a Dungeness crab permit issued under Section 8280 as it read on April 1, 1994, who made a minimum of four landings utilizing traps in this state in each of three Dungeness crab seasons in the period between November 1, 1984, and April 1, 1994, in his or her name from a vessel operated by that person as documented by landing receipts, who currently does not own a vessel in his or her name, and who has not sold or transferred a vessel otherwise qualifying for a permit under this section. A permit may be issued under this paragraph for a vessel not greater in size than the vessel from which the previous landings were made, and, in no event, for a vessel of more than 60 feet in overall length, to be placed on a vessel that the person purchases or contracts for construction on or before April 1, 1996. A permit issued under this paragraph shall be nontransferable and shall not be used for a vessel not owned by that person, and shall be revoked if the person (A) fails to renew the permit or annually renew his or her commercial fishing license issued pursuant to Section 7852 or (B) is or becomes the owner of another vessel permitted to operate in the Dungeness crab fishery pursuant to this section.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of Section 8280.1(b)(6).

§ 48140. Waiver of ownership requirement

48140. The department may waive the requirement under Section 48105, 48110, 48115, or 48120 that a person own a commercial fishing vessel that has been registered pursuant to Section 14755 in each of the 1991–92, 1992–93, and 1993–94 permit years, for one of those required years, if all the following conditions are met:

(a) The vessel was registered and used in the California Dungeness crab fishery during the registration year immediately prior to the year for which the waiver is sought.

(b) The vessel was registered and used in the California Dungeness crab fishery after the year for which the waiver is sought.

(c) The reason for the failure to register in the year for which the waiver is sought was a death, illness, or injury, or other hardship, as determined by the review panel, which prevented the vessel from being registered and operated in the fishery for that registration year.

Comment. Section 48140 continues former Fish and Game Code Section 8280.1(f) without substantive change.

§ 48145. Documentation required for permit

48145. The department may require affidavits offered under penalty of perjury from persons applying for permits under this article, or from witnesses corroborating the statements of a person applying for a Dungeness crab vessel permit. Affidavits offered under penalty of perjury shall be required of an

1 applicant if the department cannot locate records required to qualify for a permit
2 under this article.

3 **Comment.** Section 48145 continues former Fish and Game Code Section 8280.1(c) without
4 substantive change.

5 **§ 48150. Inoperative date of article**

6 48150. This article shall become inoperative on April 1, 2019, and, as of January
7 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
8 before January 1, 2020, deletes or extends the date on which this article becomes
9 inoperative or is repealed.

10 **Comment.** Section 48150 continues former Fish and Game Code Section 8280.1(h) without
11 substantive change.

12 Article 3. Transfers

13 **§ 48300. General restriction on transfer**

14 48300. Notwithstanding Chapter 2 (commencing with Section 22500) of Title
15 15 of Part 6 of Division 6, a Dungeness crab vessel permit shall not be transferred,
16 except as provided in this article.

17 **Comment.** Section 48300 continues former Fish and Game Code Section 8280.3(a) without
18 substantive change.

19 **§ 48305. Application for transfer**

20 48305. A vessel owner shall sign an application for transfer, and certify that the
21 information included in the application is true to the best of his or her information
22 and belief.

23 **Comment.** Section 48305 continues former Fish and Game Code Section 8280.6(c) without
24 change.

25 **§ 48310. Transfer upon sale of permitted vessel**

26 48310. (a) The owner of a vessel to whom a Dungeness crab vessel permit has
27 been issued shall transfer the permit for the use of that vessel, upon the sale of the
28 vessel by the permitholder to the person purchasing the vessel.

29 (b) Upon notice to the department, the person purchasing the vessel may use the
30 vessel for the taking and landing of Dungeness crab for any and all of the
31 unexpired portion of the permit year, and is eligible for a permit pursuant to
32 Article 2 (commencing with Section 48100) for the use of that vessel in
33 subsequent years.

34 (c) The person purchasing the vessel shall not transfer the permit for use of that
35 vessel in the Dungeness crab fishery to another replacement vessel during the
36 same permit year.

37 **Comment.** Section 48310 continues former Fish and Game Code Section 8280.3(b) without
38 substantive change.

1 **§ 48315. Transfer to replacement vessel of equivalent capacity**

2 48315. (a) The owner of a vessel to whom a Dungeness crab vessel permit has
3 been issued may transfer the permit to a replacement vessel of equivalent capacity,
4 except as specified in this article.

5 (b) Upon notice to the department and payment of the transfer fee specified in
6 Section 48355, the replacement vessel may be used for the taking and landing of
7 Dungeness crab for any and all of the unexpired portion of the permit year, and the
8 owner of the replacement vessel is eligible for a permit pursuant to Article 2
9 (commencing with Section 48100) for the use of that replacement vessel in
10 subsequent years.

11 **Comment.** Section 48315 continues former Fish and Game Code Section 8280.3(c) without
12 substantive change.

13 **§ 48320. Transfer to replacement vessel of greater capacity**

14 48320. The owner of a permitted vessel may transfer a Dungeness crab vessel
15 permit to a replacement vessel of greater capacity that satisfy either of the
16 following conditions:

17 (a) The replacement vessel was owned by that person on or before November
18 15, 1995, and is no more than 10 feet longer overall than the vessel for which the
19 permit was originally issued.

20 (b) The replacement vessel was purchased after November 15, 1995, and is no
21 more than five feet longer overall than the vessel for which the permit was
22 originally issued.

23 **Comment.** Section 48320 continues former Fish and Game Code Section 8280.3(d) without
24 substantive change.

25 **Notes.** (1) Proposed Section 48320 is intended to restate existing Fish and Game Code
26 Section 8280.3(d) to clarify the meaning of that subdivision, without changing its substantive
27 effect. The existing subdivision reads as follows:

28 “The owner of a permitted vessel may transfer the permit to a vessel of greater capacity that
29 was owned by that person on or before November 15, 1995, not to exceed 10 feet longer in length
30 overall than the vessel for which the permit was originally issued or to a vessel of greater capacity
31 purchased after November 15, 1995, not to exceed 5 feet longer in length overall than the vessel
32 for which the permit was originally issued.”

33 **The Commission invites comment on whether the restatement would cause any**
34 **substantive change in the meaning of the subdivision.**

35 (2) Unlike existing Fish and Game Code Section 8280.3(b) and (c), existing Section 8280.3(d)
36 (which would be continued by proposed Section 48320) does not expressly provide that following
37 the specified permit transfer the owner may use the replacement vessel to take and land
38 Dungeness crab for the unexpired portion of the permit year, nor provide that the owner is
39 eligible for a permit to use that replacement vessel in subsequent years.

40 **The Commission invites comment as to whether those provisions should be added to**
41 **proposed Section 48320.**

42 **§ 48325. Transfer to replacement vessel not equipped with trawl nets**

43 48325. The department may authorize the owner of a permitted vessel to
44 transfer a Dungeness crab vessel permit to a replacement vessel that does not fish

with trawl nets, if all of the following conditions are satisfied:

- (a) The replacement vessel was owned by the owner on or before April 1, 1996.
- (b) The replacement vessel is more than five feet longer overall than the vessel for which the permit was previously issued.
- (c) A vessel of a larger size is essential to the owner for participation in a fishery other than a trawl net fishery.
- (d) The owner held a permit on or before January 1, 1995, for the fishery for which a larger vessel is needed, and has participated in that fishery.
- (e) The permit for the vessel from which the permit is to be transferred qualified pursuant to paragraph (1) of subdivision (a) of Section 48105.
- (f) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length overall than the vessel for which the permit was originally issued, and the vessel to which the permit is to be transferred does not exceed 60 feet in overall length.

Comment. Section 48325 continues former Fish and Game Code Section 8280.3(e) without substantive change.

Notes. (1) Proposed Section 48325 is intended to restate existing Fish and Game Code Section 8280.3(e) to clarify the meaning of that subdivision, without changing its substantive effect. The existing subdivision reads as follows:

“The department may authorize the owner of a permitted vessel to transfer the permit to a replacement vessel that was owned by that person on or before April 1, 1996, that does not fish with trawl nets that is greater than five feet longer in length overall than the vessel for which the permit was originally issued, if all of the following conditions are satisfied:

(1) A vessel of a larger size is essential to the owner for participation in another fishery other than a trawl net fishery.

(2) The owner held a permit on or before January 1, 1995, for the fishery for which a larger vessel is needed and has participated in that fishery.

(3) The permit for the vessel from which the permit is to be transferred qualified pursuant to paragraph (1) of subdivision (b) of Section 8280.1.

(4) The vessel to which the permit is to be transferred does not exceed 20 feet longer in length overall than the vessel for which the permit was originally issued and the vessel to which the permit is to be transferred does not exceed 60 feet in overall length.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the subdivision.

(2) The introductory language of existing Fish and Game Code Section 8280.3(e) indicates that the Department “may authorize” the transfer of a Dungeness crab vessel permit under specified circumstances. This language does not conform to the introductory language of subdivisions (c) and (d) of Section 8280.3 (which would be continued, respectively, by proposed Sections 48315 and 48320), both of which provide that an owner “may transfer” a Dungeness crab vessel permit under different specified circumstances.

The Commission invites comment as to whether there is some intended difference in meaning with regard to the introductory language of these provisions, and if not whether it would be problematic to conform the language.

(3) Unlike existing Fish and Game Code Section 8280.3(b) and (c), existing Section 8280.3(e) does not expressly provide that following the specified permit transfer the owner may use the replacement vessel to take and land Dungeness crab for the unexpired portion of the permit year, nor provide that the owner is eligible for a permit to use that replacement vessel in subsequent years.

1 **The Commission invites comment as to whether those provisions should be added to**
2 **proposed Section 48325.**

3 **§ 48330. Restriction on multiple transfers**

4 48330. A transfer of a permit to a larger vessel shall not be allowed more than
5 one time. If a permit is transferred to a larger vessel, any Dungeness crab vessel
6 permit for that permit year or any subsequent permit years for that larger vessel
7 shall not be transferred to another larger vessel. The department shall not
8 thereafter issue a Dungeness crab vessel permit for the use of the original vessel
9 from which the permit was transferred, except that the original vessel may be used
10 to take or land Dungeness crab after that transfer, if its use is authorized pursuant
11 to another Dungeness crab vessel permit subsequently transferred to that vessel
12 pursuant to this paragraph.

13 **Comment.** Section 48330 continues former Fish and Game Code Section 8280.3(f) without
14 substantive change.

15 **§ 48335. Transfer based on serious damage, loss or destruction of permitted vessel**

16 48335. (a) Notwithstanding Sections 47915 and 47920, the owner of a vessel
17 for which a Dungeness crab vessel permit was issued that is lost or destroyed, or
18 suffers serious damage that renders the vessel inoperable, may, during the period
19 of two years after the loss or damage of the vessel for which the permit was
20 originally issued, transfer the permit to another vessel, if all the following
21 conditions are satisfied:

22 (1) The replacement vessel is of equivalent size and capacity of the vessel that
23 was lost or damaged.

24 (2) The permittee at the time of the loss, theft, damage, or destruction of the
25 vessel applies for the transfer.

26 (3) The lost or damaged vessel has a current permit.

27 (4) The owner of the lost or damaged vessel makes assurances in the application
28 that any renewal of the permit that becomes due during the application processing
29 period will be made.

30 (5) The owner of the lost or damaged vessel submits proof that the department
31 may reasonably require to establish the loss or damage of the vessel. Proof of loss
32 or destruction shall be documented by submission of a copy of the report filed
33 with the United States Coast Guard or any other law enforcement or fire agency
34 that investigated the loss. In the case of mechanical breakdown, the request shall
35 include an estimate of the costs to repair the vessel from a marine surveyor or boat
36 repair yard.

37 (6) The department gives written approval of the transfer.

38 (b) The department shall not issue a permit for a replacement vessel pursuant to
39 this paragraph if the lost or damaged vessel was reported lost, stolen, destroyed,
40 mechanically broken down, or damaged for fraudulent purposes.

41 (c) If the permit is not permanently transferred to another vessel owned by the

person to whom the vessel permit was originally issued within two years of the loss or damage, the permit shall become void by operation of law.

Comment. Section 48335 restates former Fish and Game Code Section 8280.3(g)(2) without substantive change.

Notes. (1) Proposed Section 48335 is intended to restate existing Fish and Game Code Section 8280.3(g)(2) to clarify the meaning of that paragraph, without changing its substantive effect. The existing paragraph reads as follows:

“Notwithstanding subdivision (e) of Section 8280.2, in the event of loss or destruction of a vessel for which a Dungeness crab vessel permit was issued, or serious damage that renders the vessel inoperable, and upon written approval of the department, the owner of the vessel to whom the permit was issued may retain the permit and may transfer the permit to another vessel of equivalent size and capacity of the vessel that was lost or damaged during the period of two years after the loss or damage of the vessel for which the permit was originally issued. The owner of the lost or damaged vessel shall submit proof that the department may reasonably require to establish the loss or damage of the vessel. Only the permittee at the time of the loss, theft, damage, or destruction of the vessel may apply for the transfer of the vessel permit. Proof of loss or destruction shall be documented by submission of a copy of the report filed with the United States Coast Guard or any other law enforcement or fire agency that investigated the loss. In the case of mechanical breakdown, the request shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard. The department shall not issue a permit for a replacement vessel pursuant to this paragraph if the lost or damaged vessel was reported lost, stolen, destroyed, mechanically broken down, or damaged for fraudulent purposes. The department shall only transfer a permit pursuant to this paragraph if the lost or damaged vessel has a current permit and the owner of the lost or damaged vessel makes assurances in the application that any renewal of the permit that becomes due during the application processing period will be made. If the permit is not permanently transferred to another vessel owned by the person to whom the vessel permit was originally issued within two years of the loss or damage, the permit shall become void by operation of law.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the subdivision.

(2) Unlike existing Fish and Game Code Section 8280.3(b) and (c), existing Section 8280.3(g)(2) does not expressly provide that following the specified permit transfer the owner may use the replacement vessel to take and land Dungeness crab for the unexpired portion of the permit year, nor provide that the owner is eligible for a permit to use that replacement vessel in subsequent years.

The Commission invites comment as to whether those provisions should be added to proposed Section 48335.

§ 48340. Temporary transfer to non-permitted replacement vessel

48340. (a) The owner of a vessel to whom a Dungeness crab vessel permit has been issued, which is seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by the department and approved by the director, may temporarily transfer the permit to a replacement vessel for which use in the Dungeness crab fishery is not permitted pursuant to this section or Section 47900 if all of the following conditions are satisfied:

(1) The vessel from which the permit is transferred has made California Dungeness crab landings with trap gear, which have been documented on department landing receipts.

(2) The vessel from which the permit is transferred has had California Dungeness crab landings amounting to not less than 5,000 pounds cumulative for the past two Dungeness crab seasons.

(3) The replacement vessel is of equivalent size and capacity of the originally permitted vessel.

(4) The replacement vessel is no greater than 10 feet longer in length overall than the vessel from which the permit is transferred.

(5) The permittee at the time of the loss, theft, damage, breakdown, or destruction of the vessel applies for the transfer.

(6) The owner of the vessel submits proof that the department may reasonably require to establish the existence of the conditions of this section. Proof of loss or destruction shall be documented by submission of a copy of the report filed with the United States Coast Guard or any other law enforcement or fire agency that investigated the loss. In the case of mechanical breakdown, the request shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard.

(7) The department gives written approval of the transfer.

(c) The transfer shall be for a period of not more than six months during the current permit year.

(d) The department shall not issue a permit for a replacement vessel pursuant to this subdivision if the permitted vessel was reported lost, stolen, mechanically broken down, destroyed, or damaged for fraudulent purposes.

(e) Upon approval by the director, the owner of a vessel granted a six-month temporary transfer under this section may be granted an additional six-month extension of the temporary transfer.

Comment. Section 48340 restates former Fish and Game Code Section 8280.3(g)(1) without substantive change.

Notes. (1) Proposed Section 48340 is intended to restate existing Fish and Game Code Section 8280.3(g)(1) to clarify the meaning of that paragraph, without changing its substantive effect. The existing paragraph reads as follows:

“Upon the written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued, which has California Dungeness crab landings made with trap gear documented on department landing receipts and which has had California Dungeness crab landings amounting to not less than 5,000 pounds cumulative for the past two Dungeness crab seasons, may temporarily transfer the permit to a replacement vessel for which use in the Dungeness crab fishery is not permitted pursuant to this section or Section 8280.1 that is of equivalent size and capacity of the originally permitted vessel, no greater than 10 feet longer in length overall than the vessel from which the permit is transferred, for a period of not more than six months during the current permit year if the vessel for which the permit was issued is seriously damaged, suffers major mechanical breakdown, or is lost or destroyed, as determined by the department, upon approval of the director. The owner of the vessel shall submit proof that the department may reasonably require to establish the existence of the conditions of this paragraph. Only the permittee at the time of the loss, theft, damage, breakdown, or destruction of the vessel may apply for the transfer of the vessel permit. Proof of loss or destruction shall be documented by submission of a copy of the report filed with the United States Coast Guard or any other law enforcement or fire agency that investigated the loss. In the case of mechanical breakdown, the

request shall include an estimate of the costs to repair the vessel from a marine surveyor or boat repair yard. The department shall not issue a permit for a replacement vessel pursuant to this subdivision if the permitted vessel was reported lost, stolen, mechanically broken down, destroyed, or damaged for fraudulent purposes. Upon approval by the director, the owner of a vessel granted a six-month temporary transfer under this section may be granted an additional six-month extension of the temporary transfer.”

The Commission invites comment on whether the restatement would cause any substantive change in the meaning of the subdivision.

(2) Unlike existing Fish and Game Code Section 8280.3(b) and (c), existing Section 8280.3(g)(1) does not expressly provide that following the specified permit transfer the owner may use the replacement vessel to take and land Dungeness crab for the unexpired portion of the permit year, nor provide that the owner is eligible for a permit to use that replacement vessel in subsequent years.

The Commission invites comment as to whether those provisions should be added to proposed Section 48340.

§ 48345. Retention of permit upon sale of permitted vessel

48345. (a) Upon written approval of the department, the owner of a vessel to whom the Dungeness crab vessel permit has been issued may retain that permit upon the sale of that permitted vessel, for the purpose of transferring the permit to another vessel to be purchased by that individual within one year of the time of sale of the vessel for which the permit was originally issued, if the requirements of this article are satisfied, including the payment of transfer fees.

(b) If the permit is not transferred to a new vessel owned by the person to whom the vessel permit was originally issued within one year of the sale of the vessel for which it was originally issued, or if the person does not retain ownership of the new vessel to which the permit is transferred for a period of not less than one year, the permit shall become void by operation of law.

Comment. Section 48345 continues former Fish and Game Code Section 8280.3(h) without substantive change.

§ 48350. Death or incapacity of permitholder

48350. (a) In the event of the death or incapacity of a permitholder, the permit shall be transferred, upon application, to the heirs or assigns, or to the working partner, of the permitholder, together with the transfer of the vessel for which the permit was issued.

(b) The new owner may continue to operate the vessel under the permit, renew the permit, or transfer the permit, upon sale of the vessel pursuant to Section 48310.

(c) The estate of the holder of a transferable Dungeness crab vessel permit may renew that permit as provided for in statute, if needed to keep it valid, or may transfer that permit pursuant to these regulations, no later than two years from the date of death of the permitholder as listed on the death certificate.

Comment. Section 48350 continues former Fish and Game Code Section 8280.3(i) without substantive change.

1 **§ 48355. Fees for transfer**

2 48355. The department shall charge a nonrefundable fee of two hundred dollars
3 (\$200) for each transfer of a permit authorized pursuant to this article, for the
4 reasonable regulatory costs of the department.

5 **Comment.** Section 48355 continues former Fish and Game Code Section 8280.6(b) without
6 substantive change.

7 **§ 48360. Inoperative date of article**

8 48360. This article shall become inoperative on April 1, 2019, and, as of January
9 1, 2020, is repealed, unless a later enacted statute that becomes operative on or
10 before January 1, 2020, deletes or extends the date on which this article becomes
11 inoperative or is repealed.

12 **Comment.** Section 48360 continues former Fish and Game Code Sections 8280.3(j) and
13 8280.6(c) without substantive change.

14 Article 4. Miscellaneous Provisions

15 **§ 48500. Legislative declaration**

16 48500. (a) The Legislature finds and declares that the Dungeness crab fishery is
17 important to the state because it provides a valuable food product, employment for
18 those persons engaged in the fishery, and economic benefits to the coastal
19 communities of the state.

20 (b) The Legislature further finds that, in order to protect the Dungeness crab
21 fishery, it is necessary to limit the number of vessels participating in that fishery to
22 take Dungeness crab and it may be necessary to limit the quantity and capacity of
23 the fishing gear used on each vessel to take Dungeness crab.

24 (c) The Legislature further finds and declares that to limit the number of vessels
25 in the Dungeness crab fishery, it is necessary to require that the owner of each
26 vessel participating in the fishery obtain and possess a permit for that vessel and
27 that the initial issuance of permits shall be limited to those persons owning vessels
28 qualifying under Article 2 (commencing with Section 48100).

29 **Comment.** Section 48500 continues former Fish and Game Code Section 8280 without
30 substantive change.

31 **§ 48505. Location where permits valid**

32 48505. Dungeness crab vessel permits are valid only in waters of the state and in
33 the Pacific Ocean in federal waters south of the border with Oregon.

34 **Comment.** Section 48505 continues former Fish and Game Code Section 8280.9 without
35 substantive change.

36 **§ 48510. Assistance of unpermitted vessel**

37 48510. (a) Notwithstanding Section 47900, the owner of a vessel, who has a
38 Dungeness crab vessel permit for that vessel that has not been suspended or

1 revoked, may contract for the use of a vessel that is registered pursuant to Section
2 14755 and for which a Dungeness crab vessel permit has not been issued, for the
3 purpose of assisting the crew of the permitted vessel in the deployment of
4 Dungeness crab traps.

5 (b) An unpermitted vessel used for the purpose of assisting in the deployment of
6 Dungeness crab traps pursuant to this section shall not have on board any
7 Dungeness crab, or equipment for the retrieval of Dungeness crab traps.

8 **Comment.** Section 48510 continues former Fish and Game Code Section 8280.7 without
9 substantive change.

10 CHAPTER 5. ROCK CRAB

11 § 48650. Rock crab season

12 48650. (a) Subject to Title 6 (commencing with Section 19200) of Part 6 of
13 Division 6, Sections 47005 and 47460, this chapter, and subject to the regulation
14 of the commission authorized under subdivision (c), rock crab may be taken in
15 traps in any waters of the state at any time, except in Districts 2585, 2630, 2635,
16 and 2650 and those portions of District 2640 lying on the north and east sides of
17 Santa Catalina Island north of Southeast Rock. Rock crab (*Cancer antennarius*),
18 red crab (*Cancer productus*), or yellow crab (*Cancer anthonyi*), which is less than
19 4 1/4 inches, measured in a straight line through the body, from edge of shell to
20 edge of shell at the widest part, shall not be taken, possessed, bought, or sold.

21 (b) Any person taking rock crab shall carry a measuring device and shall
22 measure any rock crab immediately upon removal from the trap. If the person
23 determines that the rock crab is undersize, the person shall return it to the water
24 immediately.

25 (c) Upon the recommendation of the director regarding rock crab fishery
26 management measures, and following a public hearing on the matter, the
27 commission may adopt regulations to manage the rock crab resource consistent
28 with Title 3 (commencing with Section 12100) of Part 4 of Division 6.

29 **Comment.** Section 48650 continues former Fish and Game Code Section 8282 without
30 substantive change.

31 § 48655. Take of rock crab

32 48655. (a) Subject to the provisions of this title, rock crab, as defined in Section
33 46855, may be taken with rock crab traps.

34 (b) A rock crab trap may have any number of openings of any size. However, a
35 rock crab trap constructed of wire mesh with an inside mesh measurement of not
36 less than 1 7/8 inches by 3 7/8 inches, with the 3 7/8 inch measurement parallel to
37 the floor, shall have at least one rigid circular opening of not less than 3 1/4
38 inches, inside diameter, located on any outside wall of the rearmost chamber of the
39 crab trap and shall be located so that at least one-half of the opening is in the upper
40 half of the trap. Rock crab traps constructed of other material shall have at least

two rigid circular openings of not less than 3 1/4 inches, inside diameter, on the top or side of the rearmost chamber of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap. No rigid circular opening, as required, shall extend more than 1/2 inch beyond the plane of the wall side or top of the trap in which it is located, and it shall be clearly accessible to any crab which may be in the trap.

(c) Subject to the provisions of this title, Dungeness crab may be taken incidentally with a rock crab trap used pursuant to this subdivision to take rock crab, provided that the incidental taking occurs only during the season when it is lawful to take both species. A Dungeness crab, taken incidentally with a rock crab trap, which does not comply with the provisions of this title shall be immediately returned to the waters from which it was taken.

(d) A person shall not possess any lobster aboard a vessel while the vessel is being used pursuant to this subdivision to take rock crab.

Comment. Section 48655 continues former Fish and Game Code Section 9011(b) without substantive change.

Note. Existing Fish and Game Code Section 9011(b) (which would be continued by proposed Section 48655) contains several cross-references to “Article 6 (commencing with Section 8275) of Chapter 2.” In the proposed law, all provisions contained in that article have been continued in the title containing proposed Section 48655. However, that proposed title contains several additional provisions relevant to the subject matter of Section 9011(b) that are *not* in the “Article 6” referenced in that section: Sections 8834, 9011(a), and 9012.

The Commission invites comment on whether the additional inclusion of these provisions in the cross-reference in proposed Section 48655 would cause any problems.

§ 48660. Incidental take

48660. (a) Except as provided in Section 47450, 48655, or subdivision (b), any species other than rock crab taken incidentally in a crab trap being used to take rock crab shall be immediately released back to the water.

(b) The following species may be taken incidentally in crab traps being used to take rock crab, under a permit issued pursuant to Section 19205, in District 2625 or 2685:

(1) Kellet’s whelk.

(2) Octopus.

(3) Crabs other than of the genus *Cancer*, except as provided in Section 47450 or 48655.

Comment. Section 48660 continues former Fish and Game Code Section 8284(b) and (c) without substantive change.


1 TITLE 3. LICENSE SUSPENSION

2 § 48800. Revocation or suspension of license

3 48800. (a) In addition to any other applicable penalty, the commercial fishing
4 license of the master of a vessel may be revoked or suspended by the commission,
5 when requested by the department, for a period not to exceed one year, upon the
6 second conviction in three years of the master or the master's agent, servant,
7 employee, or any other person acting under the master's direction or control, for a
8 violation of any provision of this part.

9 (b) A master's license shall not be revoked unless both the first and second
10 convictions are for a violation by the master or a violation occurring when the
11 person convicted was acting as the master's agent, servant, employee, or acting
12 under the master's direction or control.

13 **Comment.** Section 48800 restates the part of former Fish and Game Code Section 12002.8(d)
14 and (e) applicable to the provisions of this part, without substantive change.

15  **Note.** Proposed Section 48800(a) is intended to restate the part of existing Fish and Game
16 Code Section 12002.8(d) applicable to this part, to clarify the meaning of that existing provision
17 without changing its substantive effect. The existing provision begins as follows, with the restated
18 language italicized:

19 "Notwithstanding *Sections 12000, 12001, and 12002*, the commercial fishing license of the
20 master of a vessel may be revoked or suspended by the commission, when requested by the
21 department...."

22 **The Commission invites comment on whether the restatement of the italicized language in**
23 **proposed Section 48800(a) would cause any substantive change in the meaning of the**
24 **provision.**

25 PART 7. CRAYFISH

26 TITLE 1. CRAYFISH GENERALLY

27 § 48950. Crustacean

28 48950. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a
29 crayfish is a crustacean.

30 **Comment.** Section 48950 is new. It is added for drafting convenience.

31 § 48955. Provisions not exclusive

32 48955. The provisions of this part are not intended to be exclusive. Other
33 provisions that govern crayfish include, but are not limited to, the following
34 provisions:

35 (a) Section 23355.

36 (b) Section 26500.

37 **Comment.** Section 48955 is new. It is added for drafting convenience.

1 TITLE 2. COMMERCIAL PROVISIONS

2 § 49000. Application of title

3 49000. For purposes of Section 45005, the provisions in this title are commercial
4 provisions.

5 **Comment.** Section 49000 is new. It is added for drafting convenience.

6 § 49005. Take

7 49005. The taking of crayfish shall be subject to regulations adopted by the
8 commission.

9 **Comment.** Section 49005 continues former Fish and Game Code Section 8490 without
10 substantive change.

11 § 49010. Use of traps

12 49010. (a) Crayfish traps may be used at any time, in any district, to take
13 crayfish only.

14 (b) Traps shall not exceed three feet in greatest dimension.

15 (c) Any other species taken with crayfish traps shall be returned to the water
16 immediately.

17 (d) The commission may prohibit the use of crayfish traps that will injure fish,
18 or that will entrap unnecessarily large numbers of fish other than crayfish.

19 **Comment.** Section 49010 continues former Fish and Game Code Section 9024 without
20 substantive change.

21 § 49015. Take in Lake Tahoe

22 49015. (a) Any allowance for the commercial taking of crayfish in Lake Tahoe
23 or in the Lake Tahoe Basin shall be for the primary purpose of population
24 reduction and control of the signal crayfish, an invasive species. The commercial
25 taking of crayfish may be allowed only to the extent that it is consistent with state
26 goals for management of invasive species and other environmental standards,
27 including an environmental analysis conducted by the Tahoe Regional Planning
28 Agency or another appropriate lead agency for each proposed individual harvest
29 operation.

30 (b) The commission shall ensure that, with respect to the taking of crayfish for
31 commercial purposes in Lake Tahoe or in the Lake Tahoe Basin, the commission's
32 regulations are consistent with the Lake Tahoe Region Aquatic Invasive Species
33 Management Plan, as amended.

34 **Comment.** Section 49015 continues former Fish and Game Code Section 8491 without
35 change.

36 § 49020. Overfishing in Sacramento-San Joaquin Delta

37 49020. The department shall take the steps it determines are necessary to
38 prevent overfishing of crayfish in the Sacramento-San Joaquin Delta. Those steps

1 may include, but are not limited to, submitting to the Legislature proposed
2 legislation to place limitations on the commercial crayfishing in that area.

3 **Comment.** Section 49020 continues former Fish and Game Code Section 8492 without
4 change.


5 PART 8. KRILL

6 TITLE 1. KRILL GENERALLY

7 § 49150. Crustacean

8 49150. For the purposes of Title 2 (commencing with Section 45400) of Part 3,
9 krill are crustaceans.

10 **Comment.** Section 49150 is new. It is added for drafting convenience.

11  **Note.** Based on Commission research, it appears that krill are crustaceans. **The Commission**
12 **invites comment on whether that is correct.**

13 TITLE 2. COMMERCIAL PROVISIONS

14 § 49200. Application of title

15 49200. For purposes of Section 45005, the provisions in this title are commercial
16 provisions.

17 **Comment.** Section 49200 is new. It is added for drafting convenience.

18 § 49205. Take

19 49205. (a) It is unlawful to take or land krill of any species of euphausiid for any
20 purpose, except scientific research pursuant to regulations adopted by the
21 commission.

22 (b) This section applies to krill taken in the waters of the state and up to 200
23 miles offshore, as long as federal law does not regulate the taking of krill.

24 **Comment.** Section 49205 continues former Fish and Game Code Section 8510 without
25 substantive change.

26 PART 9. LOBSTER

27 TITLE 1. LOBSTER GENERALLY

28 § 49300. Crustacean

29 49300. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a
30 lobster is a crustacean.

31 **Comment.** Section 49300 is new. It is added for drafting convenience.

1 **§ 49305. Provisions not exclusive**

2 49305. The provisions of this part are not intended to be exclusive. Other
3 provisions that govern lobster include, but are not limited to, the following
4 provisions:

5 (a) Section 14875.

6 (b) Section 15510.

7 (c) Section 19205.

8 (d) Section 19500.

9 (e) Section 19230.

10 (f) **Section 10664.**

11 (g) **Section 10667.**

12 **Comment.** Section 49305 is new. It is added for drafting convenience.

13 **§ 49310. Take of spiny lobster**

14 49310. Spiny lobster may not be taken under a sport fishing license, except by
15 use of a hoop net or by hand.

16 **Comment.** Section 49310 continues former Fish and Game Code Section 7256 without
17 substantive change.

18 **§ 49315. Importing of spiny lobster**

19 49315. (a) Spiny lobsters may be imported into California until the twenty-sixth
20 day after the close of the California season.

21 (b) Lobsters imported into California and lobsters legally taken in California
22 during the open season prescribed in this code may be possessed and sold during
23 the closed season, subject to the regulations of the commission.

24 (c) The cost of inspection and marking, under the regulations of the commission,
25 shall be paid by the importer or owner of the lobsters.

26 **Comment.** Section 49315 continues former Fish and Game Code Section 2365 without
27 substantive change.

28 **TITLE 2. COMMERCIAL PROVISIONS**

29 **CHAPTER 1. PRELIMINARY PROVISIONS**

30 **§ 49450. Application of title**

31 49450. For purposes of Section 45005, the provisions in this title are commercial
32 provisions.

33 **Comment.** Section 49450 is new. It is added for drafting convenience.

CHAPTER 2. PERMIT

§ 49500. Required permit

49500. (a) Lobsters shall not be taken for a commercial purpose except under a valid lobster permit issued to that person that has not been suspended or revoked, and subject to regulations adopted by the commission.

(b) Every person who takes, assists in taking, possesses, or transports a lobster for a commercial purpose while on any boat, barge, or vessel, or who uses or operates or assists in using or operating any boat, net, trap, line, or other appliance to take a lobster for a commercial purpose, shall have a valid lobster permit.

(c) The permit fee for a lobster permit is two hundred sixty-five dollars (\$265).

(d) The fee for a lobster crewmember permit is one hundred twenty-five dollars (\$125).

(e) For the purposes of this section, possession of more than three times the sport bag limit of lobster is prima facie evidence that the lobster in possession was taken for a commercial purpose.

(f) Notwithstanding Section 4400, or subdivision (a) of Section 8400, the punishment for a violation of this section is a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), imprisonment in a county jail not to exceed six months, or both that fine and imprisonment.

(g) The court shall also permanently revoke any commercial fishing license or commercial fishing permit, and may permanently revoke any sport fishing license issued to the violator by the department.

(h) Any vessel, diving or other fishing gear or apparatus, or vehicle used in the commission of an offense subject to this section may be seized and may be ordered forfeited by the court pursuant to subdivision (c) of Section 8630.

(i) Fifty percent of the revenue deposited in the Fish and Game Preservation Fund from fines and forfeitures collected pursuant to this section shall be allocated for the support of the Special Operations Unit of the department, and used for law enforcement purposes.

Comment. Subdivisions (a) through (e) of Section 49500 continue former Fish and Game Code Section 8254 without substantive change.

Subdivision (f) continues former Fish and Game Code Section 12006(a)(2) without substantive change.

Subdivisions (g) through (i) continue the part of former Fish and Game Code Section 12006(b) applicable to a violation of former Fish and Game Code Section 8254 without substantive change.

§ 49505. Display of permit number

49505. The permit number of the person owning or in command of any boat used to take lobster shall be visibly displayed on both sides of the boat, in 10-inch black numbers, one inch wide, on a white background.

Comment. Section 49505 continues former Fish and Game Code Section 8257 without substantive change.

1 **§ 49510. Limit on number of permits issued**

2 49510. Whenever it is necessary to prevent overutilization or to ensure efficient
3 and economic operation of the fishery, the commission may limit the number of
4 permits that may be issued pursuant to Section 49500. As it determines
5 appropriate to protect the resource, the commission may limit the number of
6 permits on a statewide basis or within selected geographical areas.

7 **Comment.** Section 49510 continues former Fish and Game Code Section 8259 without
8 substantive change.

9 **§ 49515. Suspension of permit pending criminal proceeding**

10 49515. (a) When a complaint has been filed in a court of competent jurisdiction
11 charging a holder of a commercial lobster permit with a violation of Section 49600
12 or 49605, and no disposition of the complaint has occurred within 90 days after it
13 has been filed in the court, the department may suspend the commercial lobster
14 permit of the person.

15 (b) The permitholder whose permit was suspended under this section may,
16 within 10 days after the receipt of the suspension notice from the department,
17 request a hearing, and, within 20 days after the request has been made, a hearing
18 shall be held by the commission. A decision shall be made within a reasonable
19 time on whether the suspension of the permit shall be terminated or continued
20 until the disposition of the complaint by the court.

21 (c) In determining whether to terminate or continue the suspension of the permit,
22 the commission shall consider whether or not the violation could have a
23 detrimental effect on the resources, and whether or not a continued suspension of
24 the permit is in the best public interest.

25 (d) The commission shall also make a finding whether there is sufficient
26 evidence that a violation has occurred. A failure to make a finding that there is
27 sufficient evidence that a violation has occurred, or a finding that there is
28 insufficient evidence of the violation, shall terminate the suspension of the permit
29 under this section.

30 (e) If a permitholder whose permit is suspended pursuant to this section is
31 subsequently acquitted of the charges against him or her in court, or those charges
32 are dismissed, the suspension of the permit is automatically terminated.

33 **Comment.** Section 49515 continues the first six sentences of former Fish and Game Code
34 Section 8254.7 without substantive change.

35 CHAPTER 3. TAKE

36 **§ 49600. Season for take**

37 49600. (a) Spiny lobster may be taken only between the first Wednesday in
38 October and the first Wednesday after March 15.

39 (b) Lobster traps may be set and baited 24 hours in advance of the opening date
40 of the lobster season if no other attempt is made to take or possess the lobsters.

1 **Comment.** Section 49600 continues former Fish and Game Code Section 8251 without
2 substantive change.

3 **§ 49605. Size limitation**

4 49605. (a) No spiny lobster less than three and one-quarter inches in length
5 measured in a straight line from the rear edge of the eye socket to the rear edge of
6 the body shell, both points to be on the midline of the back, may be taken,
7 possessed, purchased, or sold.

8 (b) Every person taking spiny lobster shall carry a measuring device, and shall
9 measure any lobster immediately on removal from a trap. Any removed lobster
10 that is found to be undersized shall be returned to the water immediately.

11 **Comment.** Section 49605 continues former Fish and Game Code Section 8252 without
12 substantive change.

13 **§ 49610. Possession or landing on vessel**

14 49610. Lobster may be possessed aboard or landed from any vessel on which
15 finfish are present, if every person aboard the vessel has a valid lobster permit that
16 has not been suspended or revoked, and complies with Title 6 (commencing with
17 Section 19200) of Part 6 of Division 6, and Title 2 (commencing with Section
18 49450) of Part 9, and the regulations adopted pursuant to any of those provisions.

19 **Comment.** Section 49610 continues former Fish and Game Code Section 9001.7(k) without
20 substantive change.

21 **Note.** Existing Fish and Game Code Section 9001.7(k) (which would be continued by
22 proposed Section 49610), authorizes the possession of lobster aboard or landed from any vessel
23 on which finfish are also present, in part if every person aboard the vessel complies with “Article
24 5 of Chapter 2 of the Fish and Game Code.”

25 **Although there is more than one “Article 5” within a “Chapter 2” in the existing code, the**
26 **Commission assumes the reference was intended to be to Article 5 (commencing with**
27 **Section 8250) of Chapter 2 of Part 3 of Division 6 (governing lobster), and the cross-**
28 **reference in proposed Section 49610 has been revised accordingly.**

29 **§ 49615. Filing of criminal complaint**

30 49615. No complaint shall be filed in a court charging a commercial lobster
31 permitholder with a violation of Section 49600 or 49605 unless evidence
32 supporting the charge has been reviewed by the appropriate county or city
33 prosecuting agency, and a criminal complaint has been issued by that agency.

34 **Comment.** Section 49615 continues the seventh sentence of former Fish and Game Code
35 Section 8254.7 without substantive change.

36 **CHAPTER 4. LOBSTER TRAPS**

37 **§ 49700. Use of trap**

38 49700. Subject to Title 6 (commencing with Section 19200) of Part 6 of
39 Division 6, and Title 2 (commencing with Section 49450) of Part 9, a lobster trap,

as described in Section 49705, may be used to take lobster under a lobster permit issued pursuant to Section 49500.

Comment. Section 49700 combines and restates former Fish and Game Code Sections 8250.5(a) and 9010(a) without substantive change.

Notes. (1) Proposed Section 49700 is intended to combine and restate existing Fish and Game Code Sections 8250.5(a) and 9010(a) to clarify the meaning of those provisions, without changing their substantive effect. The existing provisions read as follows:

“8250.5. (a) Subject to this article and Article 1 (commencing with Section 9000) of Chapter 4, a lobster trap, as described in Section 9010, may be used to take lobster for commercial purposes under a lobster permit issued pursuant to Section 8254.

9010. (a) Subject to Article 5 (commencing with Section 8250) of Chapter 2, spiny lobster may be taken with lobster traps under a lobster permit issued pursuant to Section 8254.”

The Commission invites comment on whether the combining and restatement of these two provisions would cause any substantive change in the meaning of either.

§ 49705. Construction of trap

49705. (a) A wire lobster trap shall be built of rectangular wire mesh, with inside mesh measurement not less than 1 1/2 inches by 3 1/2 inches, the 3 1/2-inch measurement to be parallel to the floor of the trap. A wire lobster trap shall be fitted with at least one rigid rectangular escape gap with an inside vertical measurement not less than 2 3/8 inches at all points, and an inside horizontal measurement of not less than 11 1/2 inches at all points. The horizontal sides of the escape gap shall be located parallel to, and the escape gap shall be located within 2 3/8 inches of, the floor on any outside wall of the rearmost chamber of the lobster trap. The escape gap shall be clearly accessible to the lobsters.

(b) Notwithstanding subdivision (a), wire may be used to hold the escape gap in place that reduces the inside vertical or horizontal measurement of the escape gap specified in subdivision (a), but only if all of the following requirements are met:

(1) The overall diameter of the wire, including any coating on the wire, shall measure less than 0.176 inches in diameter (the diameter of 7 SWG gauge wire using the Standard Wire Gauge (SWG) standard of measurement).

(2) A maximum of one wire wrap shall be located on each vertical side of the escape gap.

(3) A maximum of two wire wraps shall be located on the bottom horizontal side of the escape gap.

(4) Wire shall not be used on the top horizontal side of the escape gap.

(5) Each wire shall be tightly wrapped against the inside surface of the escape gap and shall not pass over the inside surface more than once. As used in this paragraph, “tightly wrapped” means no space exists at any point between the wire and the inside surface of the escape gap.

(c) A lobster trap constructed of lath or other material shall have an opening to allow a means of escape along the full length of one side of the rearmost chamber. The escape opening shall be of a spacing of not less than 2 3/8 inches, and the spacing shall be located parallel to, and within 2 3/8 inches of, the floor of the

1 lobster trap.

2 **Comment.** Section 49705 continues former Fish and Game Code Section 9010(c)-(e) without
3 substantive change.

4 **§ 49710. Locations where traps may be used**

5 49710. (a) Lobster traps may be used to take spiny lobster in Districts 2620,
6 2625, 2645, and those portions of District 2640 lying on the southerly side of
7 Santa Catalina Island between Southeast Rock and China Point.

8 (b) Notwithstanding subdivision (a), or Sections 15500 and 15510, lobster traps
9 may not be used within 75 feet of any private pier, wharf, jetty, breakwater, or
10 dock.

11 **Comment.** Subdivision (a) of Section 49710 continues former Fish and Game Code Section
12 8258 without substantive change.

13 Subdivision (b) continues former Fish and Game Code Section 9010(b) without substantive
14 change.

15 **Note.** Existing Fish and Game Code Section 9010(b) (which would be continued by proposed
16 Section 49710(b)), although not expressly referencing existing Fish and Game Code Section 8258
17 (which would be continued by proposed Section 49710(a)), appears to specify a blanket
18 restriction on where lobster traps may otherwise be used to take lobster. Proposed Section
19 49710(b) would therefore make express that the authorization to use lobster traps provided by
20 existing Section 9010(b) is subject to the restriction in existing Section 8258.

21 **The Commission invites comment on whether proposed Section 49710 accurately**
22 **reconciles the intended interrelationship between existing Sections 8258 and 9010(b).**

23 **§ 49715. Incidental take of other species**

24 49715. The following species may be taken incidentally in lobster traps being
25 fished under the authority of a lobster permit issued pursuant to Section 49500,
26 and any other species taken incidentally shall be immediately released back to the
27 water:

28 (a) Crab, other than Dungeness crab.

29 (b) Kellet's whelk.

30 (c) Octopus.

31 **Comment.** Section 49715 continues former Fish and Game Code Section 8250.5(b) without
32 substantive change.

33 **CHAPTER 5. OTHER PROHIBITIONS**

34 **§ 49750. Prohibition on sale of lobsters taken while skin diving**

35 49750. Spiny lobsters taken by a person engaged in the activity commonly
36 known as skin diving, or by a person using self-contained underwater breathing
37 apparatus, shall not be sold.

38 **Comment.** Section 49750 continues former Fish and Game Code Section 8250.5(c) without
39 substantive change.

1 **§ 49755. Preserving**

2 49755. (a) It is unlawful to pickle, can, or otherwise preserve a spiny lobster.

3 (b) Notwithstanding subdivision (a), a spiny lobster may be preserved by
4 freezing.

5 (c) A spiny lobster may be cooked for consumption in the fresh state.

6 **Comment.** Section 49755 continues former Fish and Game Code Section 8253 without
7 substantive change.

8 **PART 10. MONARCH BUTTERFLIES**

9 **§ 49850. Conservation**

10 49850. (a) The department may take feasible actions to conserve monarch
11 butterflies and the unique habitats they depend upon for successful migration.
12 These actions may include, but are not limited to, habitat restoration on
13 department lands, education programs, and voluntary agreements with private
14 landowners.

15 (b) The department may partner with federal agencies, nonprofit organizations,
16 academic programs, private landowners, and other entities that undertake actions
17 to conserve monarch butterflies and aid their successful migration, including the
18 Monarch Joint Venture.

19 (c) When undertaking actions to conserve monarch butterflies and their habitats
20 pursuant to this section, the department shall use the best available science and
21 consider, as appropriate and feasible, all of the following:

1 (1) Restoring or revegetating monarch caterpillar habitat using regionally or
2 locally appropriate native milkweed species.

3 (2) Restoring or revegetating adult monarch butterfly habitat using regionally or
4 locally appropriate native nectar plant species.

5 (3) Controlling nonnative weed species that threaten native milkweed species,
6 and controlling pests and disease, using current best management practices
7 consistent with integrated pest management principles that pose low risk to
8 monarch butterflies and their habitat.

9 (4) Incorporating diverse tree species, structures, and arrangements when
10 restoring or establishing winter habitat sites to match monarch butterfly
11 preferences for temperature, light, moisture, wind, and other microclimate
12 characteristics.

13 (5) Increasing the number of partnerships and making the most of partnerships
14 to use residential and institutional landscaped areas, agricultural noncropped lands,
15 transportation corridors, and conservation easements to create, restore, or enhance
16 monarch butterfly habitat.

17 (d) The fact that a project applicant or landowner does not enter into a voluntary
18 agreement to protect monarch butterflies shall not be grounds for denying a permit
19 or agreement or requiring additional mitigation beyond what would be required to
20 mitigate project impacts under other applicable laws, including, but not limited to,
21 the California Environmental Quality Act (Division 13 (commencing with Section
22 21000) of the Public Resources Code).

23 **Comment.** Section 49850 continues former Fish and Game Code Section 1021 without
24 change.

25 PART 11. MUSSELS

26 TITLE 1. MUSSELS GENERALLY

27 § 49900. Mollusk

28 49900. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a
29 mussel is a mollusk.

30 **Comment.** Section 49900 is new. It is added for drafting convenience.

31 § 49905. Provisions not exclusive

32 49905. The provisions of this part are not intended to be exclusive. Other
33 provisions that govern mussels include, but are not limited to, Section 20710.

34 **Comment.** Section 49905 is new. It is added for drafting convenience.

TITLE 2. DREISSENID MUSSELS

CHAPTER 1. MANAGEMENT BY DEPARTMENT

§ 49950. General prohibition

49950. Except as authorized by the department, a person shall not possess, import, ship, or transport in the state, or place, plant, or cause to be placed or planted in any water within the state, dreissenid mussels.

Comment. Section 49950 continues former Fish and Game Code Section 2301(a)(1) without change.

§ 49955. Report of discovery by any entity

49955. Any entity that discovers dreissenid mussels within this state shall immediately report the discovery to the department.

Comment. Section 49955 continues former Fish and Game Code Section 2301(e) without change.

§ 49960. Authority of department to inspect

49960. The director or his or her designee may do all of the following:

(a) Conduct inspections of conveyances, including vehicles, boats and other watercraft, containers, and trailers, that may carry or contain adult or larval dreissenid mussels.

(b) Temporarily stop conveyances that may carry or contain adult or larval dreissenid mussels on any roadway or waterway, in order to conduct inspections.

(c) Order that areas in a conveyance that contain water be drained, dried, or decontaminated pursuant to procedures approved by the department. An action undertaken pursuant to this subdivision involving the use of chemicals other than salt or hot water to decontaminate a conveyance or a facility is subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

(d) Impound or quarantine conveyances in locations designated by the department for up to five days or the period of time necessary to ensure that dreissenid mussels can no longer live on or in the conveyance.

(e) Conduct inspections of waters of the state and facilities located within waters of the state that may contain dreissenid mussels. If dreissenid mussels are detected or may be present, the director or his or her designee may order the affected waters or facilities closed to conveyances or otherwise restrict access to the affected waters or facilities, and shall order that conveyances removed from, or introduced to, the affected waters or facilities be inspected, quarantined, or disinfected in a manner and for a duration necessary to detect and prevent the spread of dreissenid mussels within the state.

Comment. Section 49960 combines and continues former Fish and Game Code Section 2301(a)(2)(A) through (D)(i), and (c)(2), without substantive change.

1 **§ 49965. Restricted access to designated areas**

2 49965. (a) For the purpose of implementing subdivision (e) of Section 49660,
3 the director or his or her designee shall order the closure or quarantine of, or
4 restrict access to, these waters, areas, or facilities in a manner and duration
5 necessary to detect and prevent the spread of dreissenid mussels within the state.

6 (b) No closure, quarantine, or restriction shall be authorized by the director or
7 his or her designee without the concurrence of the Secretary of the Natural
8 Resources Agency.

9 (c) If a closure lasts longer than seven days, the department shall update the
10 operator of the affected facility every 10 days on efforts to address the dreissenid
11 infestation. The department shall provide these updates in writing and also post
12 these updates on the department's Internet Web site in an easily accessible
13 manner.

14 (d) The department shall develop procedures to ensure proper notification of
15 affected local and federal agencies, and, as appropriate, the Department of Water
16 Resources, the Department of Parks and Recreation, and the State Lands
17 Commission in the event of a decision to close, quarantine, or restrict a facility
18 pursuant to this paragraph. These procedures shall include the reasons for the
19 closure, quarantine, or restriction, and methods for providing updated information
20 to those affected. These procedures shall also include protocols for the posting of
21 the notifications on the department's Internet Web site required by subdivision (c).

22 (e) When deciding the scope, duration, level, and type of restrictions, and
23 specific location of a closure or quarantine, the director shall consult with the
24 agency, entity, owner, or operator with jurisdiction, control, or management
25 responsibility over the marina, boat launch facility, or other facility, in order to
26 focus the closure or quarantine to specific areas and facilities so as to avoid or
27 minimize disruption of economic or recreational activity in the vicinity.

28 **Comment.** Section 49965 continues former Fish and Game Code Section 2301(a)(2)(D)(ii)-
29 (iv) without substantive change.

30 **§ 49970. Involvement of other agencies**

31 49970. (a) Upon a determination by the director that it would further the
32 purposes of this section, other state agencies, including, but not limited to, the
33 Department of Parks and Recreation, the Department of Water Resources, the
34 Department of Food and Agriculture, and the State Lands Commission, may
35 exercise the authority granted to the department in Sections 49660 and 49665.

36 (b) A determination made pursuant to paragraph (1) shall be in writing and shall
37 remain in effect until withdrawn, in writing, by the director.

38 **Comment.** Section 49970 continues former Fish and Game Code Section 2301(b) without
39 substantive change.

1 **§ 49975. Inapplicability of division of Public Resources Code**

2 49975. Except as provided in subdivision (c) of Section 49660, Division 13
3 (commencing with Section 21000) of the Public Resources Code does not apply to
4 the implementation of this section.

5 **Comment.** Section 49975 continues former Fish and Game Code Section 2301(c)(1) without
6 substantive change.

7 **§ 49980. Water supply agency cooperation**

8 49980. (a) A public or private agency that operates a water supply system shall
9 cooperate with the department to implement measures to avoid infestation by
10 dreissenid mussels, and to control or eradicate any infestation that may occur in a
11 water supply system.

12 (b) If dreissenid mussels are detected, the operator of the water supply system,
13 in cooperation with the department, shall prepare and implement a plan to control
14 or eradicate dreissenid mussels within the system. The approved plan shall contain
15 the following minimum elements:

16 (1) Methods for delineation of infestation, including both adult mussels and
17 veligers.

18 (2) Methods for control or eradication of adult mussels and decontamination of
19 water containing larval mussels.

20 (3) A systematic monitoring program to determine any changes in conditions.

21 (4) A requirement that the operator of the water supply system permit
22 inspections by the department, as well as cooperate with the department, to update
23 or revise control or eradication measures in the approved plan to address scientific
24 advances in the methods of controlling or eradicating mussels and veligers.

25 (c) If the operator of water delivery and storage facilities for public water supply
26 purposes has prepared, initiated, and is in compliance with all the elements of an
27 approved plan to control or eradicate dreissenid mussels in accordance with
28 subdivision (b), the requirements of Sections 49660 and 49665 do not apply to the
29 operation of those water delivery and storage facilities, and the operator is not
30 subject to any civil or criminal liability for the introduction of dreissenid mussel
31 species as a result of those operations.

32 (d) The department may require the operator of a facility to update its plan, and
33 if the plan is not updated or revised as described in paragraph (4) of subdivision
34 (b), Sections 49660 and 49665 shall apply to the operation of the water delivery
35 and storage facilities covered by the plan until the operator updates or revises the
36 plan and initiates and complies with all of the elements of the updated or revised
37 plan.

38 **Comment.** Section 49980 continues former Fish and Game Code Section 2301(d) without
39 substantive change.

40 **§ 49985. Department authority to adopt regulations**

41 49985. The department may adopt regulations to carry out this chapter.

1 **Comment.** Section 49985 continues former Fish and Game Code Section 2301(g) without
2 substantive change.

3 **§ 49990. Immunity from liability**

4 49990. Pursuant to Section 818.4 of the Government Code, the department and
5 any other state agency exercising authority under this section shall not be liable
6 with regard to any determination or authorization made pursuant to this chapter.

7 **Comment.** Section 49990 continues former Fish and Game Code Section 2301(h) without
8 substantive change.

9 **§ 49995. Penalty for violation**

10 49995. (a) In addition to any other penalty provided by law, any person who
11 violates this chapter, violates any verbal or written order or regulation adopted
12 pursuant to this chapter, or who resists, delays, obstructs, or interferes with the
13 implementation of this chapter, is subject to a penalty, in an amount not to exceed
14 one thousand dollars (\$1,000), which shall be imposed administratively by the
15 department.

16 (b) A penalty shall not be imposed pursuant to subdivision (a) unless the
17 department has adopted regulations specifying the amount of the penalty and the
18 procedure for imposing and appealing the penalty.

19 **Comment.** Section 49995 continues former Fish and Game Code Section 2301(f) without
20 substantive change.

21 **§ 50000. Inoperative date**

22 50000. This chapter shall remain in effect only until January 1, 2020, and as of
23 that date is repealed, unless a later enacted statute, that is enacted before January
24 1, 2020, deletes or extends that date.

25 **Comment.** Section 50000 continues former Fish and Game Code Section 2301(i) without
26 substantive change.

27 CHAPTER 2. RESERVOIR OWNERS OR MANAGERS

28 **§ 50100. Inapplicability of chapter**

29 50100. This chapter does not apply to a reservoir in which nonnative dreissenid
30 mussels have been detected.

31 **Comment.** Section 50100 continues former Fish and Game Code Section 2302(g) without
32 substantive change.

33 **§ 50105. Duties where water activities are permitted**

34 50105. Any person, or federal, state, or local agency, district, or authority that
35 owns or manages a reservoir, as defined in Section 6004.5 of the Water Code,
36 where recreational, boating, or fishing activities are permitted, except a privately
37 owned reservoir that is not open to the public, shall do both of the following:

1 (a) Assess the vulnerability of the reservoir for the introduction of nonnative
2 dreissenid mussel species.

3 (b) Develop and implement a program designed to prevent the introduction of
4 nonnative dreissenid mussel species, which shall include, at a minimum, all of the
5 following:

6 (1) Public education.

7 (2) Monitoring.

8 (3) Management of those recreational, boating, or fishing activities that are
9 permitted.

10 **Comment.** Section 50105 continues former Fish and Game Code Section 2302(a)-(b) without
11 substantive change.

12 **§ 50110. Duties where water activities are not permitted**

13 50110. Any person, or federal, state, or local agency, district, or authority, that
14 owns or manages a reservoir as defined in Section 6004.5 of the Water Code
15 where recreational, boating, or fishing activities of any kind are not permitted,
16 except a privately owned reservoir that is not open to the public, shall, based on its
17 available resources and staffing, include visual monitoring for the presence of
18 mussels as part of its routine field activities.

19 **Comment.** Section 50110 continues former Fish and Game Code Section 2302(c) without
20 substantive change.

21 **§ 50115. Duties where reservoir not open to public**

22 50115. Any entity that owns or manages a reservoir as defined in Section 6004.5
23 of the Water Code, except a privately owned reservoir, that is not open to the
24 public for recreational, boating, or fishing activities, may refuse the planting of
25 fish in that reservoir by the department, unless the department can demonstrate
26 that the fish are not known to be infected with nonnative dreissenid mussels.

27 **Comment.** Section 50115 continues former Fish and Game Code Section 2302(d) without
28 substantive change.

29 **§ 50120. Applicability of chapter to governmental entities**

30 50120. Except as specifically set forth in this chapter, this chapter applies both
31 to reservoirs that are owned or managed by governmental entities, and reservoirs
32 that are owned or managed by private persons or entities.

33 **Comment.** Section 50120 continues former Fish and Game Code Section 2302(e) without
34 substantive change.

35 **§ 50125. Adoption of regulations by department**

36 50125. To the extent that sufficient funds and personnel are available to do so,
37 the department may adopt regulations establishing procedures to implement this
38 section and Section 50130, and to enforce this chapter.

39 **Comment.** Section 50125 continues the third sentence of former Fish and Game Code Section
40 2302(f) without substantive change.

1 **§ 50130. Penalty for violation**

2 50130. (a) A violation of this chapter is not governed by subdivision (a) of
3 Section 4400.

4 (b) In lieu of any other penalty provided by law, a person who violates this
5 chapter is subject to a civil penalty in an amount not to exceed one thousand
6 dollars (\$1,000) per violation, which shall be imposed administratively by the
7 department.

8 **Comment.** Section 50130 continues the first two sentences of former Fish and Game Code
9 Section 2302(f) without substantive change.

10 **TITLE 3. COMMERCIAL PROVISIONS**

11 **§ 50250. Application of title**

12 50250. For purposes of Section 45005, the provisions in this title are commercial
13 provisions.

14 **Comment.** Section 50250 is new. It is added for drafting convenience.

15 **§ 50255. Take**

16 50255. Mussels (*Mytilus californianus*) may be taken only in accordance with
17 regulations that the commission may adopt.

18 **Comment.** Section 50255 continues former Fish and Game Code Section 8344 without
19 substantive change.

20 **PART 12. SCALLOPS**

21 **TITLE 1. SCALLOPS GENERALLY**

22 **§ 50350. Mollusk**

23 50350. For the purposes of Title 2 (commencing with Section 45400) of Part 3, a
24 scallop is a mollusk.

25 **Comment.** Section 50350 is new. It is added for drafting convenience.

26 **TITLE 2. COMMERCIAL PROVISIONS**

27 **§ 50400. Application of title**

28 50400. For purposes of Section 45005, the provisions in this title are commercial
29 provisions.

30 **Comment.** Section 50400 is new. It is added for drafting convenience.

31 **§ 50405. Sale or purchase**

32 50405. It is unlawful for a person to sell or purchase rock scallops (*Hinnites*
33 *multirugosus*) or scallops (*Pecten circularis*), except that scallops cultivated

pursuant to Part 1 (commencing with Section 23300) of Division 7 may be sold or purchased subject to regulations of the commission.

Comment. Section 50405 continues former Fish and Game Code Section 8345 without substantive change.

PART 13. SEA CUCUMBERS

TITLE 1. SEA CUCUMBERS GENERALLY

§ 50450. Provisions not exclusive

50450. The provisions of this part are not intended to be exclusive. Other provisions that govern sea cucumbers include, but are not limited to, the following provisions:

(a) Section 16110.

(b) Section 40115.

Comment. Section 50450 is new. It is added for drafting convenience.

TITLE 2. COMMERCIAL PROVISIONS

§ 50500. Application of title

50500. For purposes of Section 45005, the provisions in this title are commercial provisions.

Comment. Section 50500 is new. It is added for drafting convenience.

§ 50505. Take, possession, or landing

50505. (a) A sea cucumber shall not be taken, possessed aboard a boat, or landed by a person, for a commercial purpose, except under a valid sea cucumber permit issued to that person that has not been suspended or revoked.

(b) When taking a sea cucumber by diving, every diver shall have a sea cucumber diving permit issued to that person that has not been suspended or revoked.

(c) When a sea cucumber is taken by means other than diving, at least one person aboard the boat shall have a valid sea cucumber trawl permit issued to that person that has not been suspended or revoked.

Comment. Section 50505 continues former Fish and Game Code Section 8405 without substantive change.

§ 50510. Permit

50510. (a) An applicant for a sea cucumber permit shall specify by gear type, either trawl or dive, the method by which the applicant intends to take sea cucumbers. The gear type of a sea cucumber permit, either trawl or dive, shall not be transferable.

1 (b) The fee for a sea cucumber permit shall be two hundred fifty dollars (\$250).

2 (c) Each permittee shall complete and submit an accurate record of all sea
3 cucumber fishing activities on forms provided by the department.

4 (d) In order to renew a sea cucumber permit for any permit year, an applicant
5 shall have been issued a sea cucumber permit in the immediately preceding permit
6 year. Applications for renewal of a sea cucumber permit shall be received by the
7 department or, postmarked if mailed, by April 30 of the permit year.

8 **Comment.** Section 50510 continues former Fish and Game Code Section 8405.1 without
9 substantive change.

10 **§ 50515. Transfer of permit**

11 50515. (a) A valid sea cucumber permit may be transferred by the permittee if
12 the permittee has previously held a valid sea cucumber permit for any four permit
13 years and landed at least 100 pounds of sea cucumbers in each of those permit
14 years, as documented by landing receipts with the name of the permittee shown on
15 the receipts.

16 (b) A valid sea cucumber permit that has not been suspended or revoked may be
17 transferred only to a person who has a valid commercial fishing license issued
18 pursuant to Section 14550 that has not been suspended or revoked. A sea
19 cucumber permit shall not be transferred to a person who has had a sea cucumber
20 permit suspended or revoked, while the suspension or revocation is in effect.

21 (c) An application for transfer of a permit shall be in the form of a notarized
22 letter, and shall be submitted to the department, with reasonable proof that the
23 department may require to establish the qualifications of the permitholder and the
24 transferee, accompanied by payment to the department of a nonrefundable transfer
25 fee of two hundred dollars (\$200).

26 (d) The transfer shall take effect on the date notice of approval of the application
27 is given to the transferee by the department.

28 (e) The transferred sea cucumber permit shall be valid for the remainder of the
29 permit year, and may be renewed in subsequent years.

30 (f) A sea cucumber trawl permit may be transferred to a qualified person as
31 provided in subdivisions (b) and (c) to take sea cucumbers by diving or by use of
32 trawl nets. A sea cucumber dive permit may be transferred to a qualified person as
33 provided in subdivisions (b) and (c) only to take sea cucumbers by diving. The
34 transferee shall specify the gear type, either trawl or dive, that the transferee
35 intends to use to take sea cucumbers. The gear type of the sea cucumber permit,
36 either trawl or dive, shall not be transferable.

37 (g) Upon the death of a sea cucumber permitholder, the deceased person's sea
38 cucumber dive or trawl permit may be transferred by his or her heirs, assignees, or
39 estate to a qualified person as provided in subdivision (b), upon payment of the fee
40 described in subdivision (c), and in accordance with subdivisions (a) and (f). The
41 estate of the decedent may transfer the permit pursuant to this title no later than

1 two years from the date of death of the permitholder, as listed on the death
2 certificate.

3 (h) For purposes of a transfer under subdivision (g), the heirs, assignees, or
4 estate shall renew the permit as specified in Section 50510 to keep the permit valid
5 until transferred.

6 **Comment.** Section 50515 continues former Fish and Game Code Section 8405.2 without
7 substantive change.

8 **§ 50520. Commission regulation**

9 50520. (a) The commission, upon recommendation of the department or upon its
10 own motion and in consultation with the sea cucumber fishing industry, may adopt
11 regulations, including provisions governing seasons, gear restrictions, hours of
12 operation, and any other measures that it determines may reasonably be necessary
13 to protect the sea cucumber resource and to assure a sustainable sea cucumber
14 fishery or to enhance enforcement activities.

15 (b) The number of sea cucumber permits issued for the April 1, 1997, to March
16 31, 1998, inclusive, permit year shall constitute the maximum number of permits
17 available for all subsequent permit years for the sea cucumber fishery. The
18 department may establish by regulation a method, if necessary, to reissue any sea
19 cucumber permit not renewed or transferred. The permit type of a sea cucumber
20 permit, either trawl or dive, that is reissued shall not be transferable.

21 (c) The commission may permanently revoke the sea cucumber permit of any
22 person convicted of the unlawful taking of any California halibut while operating
23 pursuant to a sea cucumber permit. The commission may revoke the sea cucumber
24 permit of any person convicted of any other violation of this code or regulation
25 adopted pursuant thereto while operating pursuant to a sea cucumber permit. Any
26 revocation of a permit pursuant to this subdivision shall be in addition to any
27 action the department may take pursuant to subdivision (a) of Section 4400.

28 (d) The department, using existing funds, may determine the actual costs to the
29 department of enforcing this chapter. The commission, upon recommendation of
30 the department, may adjust the fee for the issuance or transfer of a permit to an
31 amount not to exceed three hundred fifty dollars (\$350), to reflect the actual cost
32 of enforcing this chapter.

33 **Comment.** Section 50520 continues former Fish and Game Code Section 8405.3 without
34 substantive change.

35 **§ 50525. Inoperative date of chapter**

36 50525. This chapter shall become inoperative on April 1, 2020, and, as of
37 January 1, 2021, is repealed, unless a later enacted statute that is enacted before
38 January 1, 2021, deletes or extends the date on which this chapter becomes
39 inoperative or is repealed.

40 **Comment.** Section 50525 continues former Fish and Game Code Section 8405.4 without
41 substantive change.

PART 14. SEA URCHINS

TITLE 1. SEA URCHINS GENERALLY

§ 50650. Provisions not exclusive

50650. The provisions of this part are not intended to be exclusive. Other provisions that govern sea urchins include, but are not limited to, the following provisions:

(a) Section 12165.

(b) Section 25125.

Comment. Section 50650 is new. It is added for drafting convenience.

§ 50655. Department grant

50655. (a) Beginning November 1, 1991, the director shall make a grant in installments to a nonprofit organization of sea urchin divers in an amount not to exceed four hundred thousand dollars (\$400,000), for the organization to accomplish the following purposes:

(1) To establish a communications network among sea urchin divers, through a newsletter and such other means as are deemed necessary and appropriate by the organization, providing divers with information on policies, procedures, statutes, and regulations affecting the sea urchin fishery, meeting announcements, and for other information the department reasonably requests to be transmitted to sea urchin divers.

(2) To establish an education program on the conservation and utilization of sea urchins.

(3) To convene statewide conferences for members of the industry to meet for purposes of strengthening the industry and benefiting industry goals.

(b) The grant shall be paid, upon submission and approval of an annual budget, in quarterly installments, in amounts deemed appropriate by the department, upon the submission to the department of progress reports which demonstrate the continued achievements of the organization toward the intended goals.

(c) Prior to making the grant, the director shall verify from the nonprofit organization's bylaws that it is established for, among other purposes, the protection, conservation, enhancement, and promotion of the sea urchin fishery, and that its membership, including its board of directors, is composed solely of licensed commercial sea urchin divers.

(d) The grant shall be funded from revenues received pursuant to former subdivision (b) of Section 8051.1, as that subdivision read on December 31, 1995. If the department determines that the revenue received from former subdivision (b) of Section 8051.1, as that subdivision read on December 31, 1995, is not sufficient to fund the amount of the grant, including departmental overhead charges which shall be recovered from the revenues received pursuant to that

former subdivision (b) of Section 8051.1, the department shall reduce the amount of the grant accordingly. The revenue received pursuant to that former subdivision (b) of Section 8051.1 shall remain available for funding of the grant program pursuant to this subdivision until that revenue is fully encumbered, or the authorized amount of the grant program is expended, whichever event is later.

(e) The revenue received pursuant to former subdivision (b) of Section 8051.1 as it read on December 31, 1995, shall first be used to reimburse the department for departmental overhead charges incurred in administering the grant.

Comment. Section 50655 continues former Fish and Game Code Section 1068 without substantive change.

Note. Existing Section 1068 (which would be continued by proposed Section 50655) requires the director of the Department of Fish and Wildlife to make a specified grant, with the grant funded from revenue received pursuant to former Fish and Game Code Section 8051.1(b). Former Section 8051.1 became inoperative in 2001, and was repealed in 2002.

The Commission invites comment on whether, based on the elimination of the specified funding provision in 2001, Section 1068 is now obsolete and need not be continued in the proposed law.

TITLE 2. COMMERCIAL PROVISIONS

§ 50700. Application of title

50700. For purposes of Section 45005, the provisions in this title are commercial provisions.

Comment. Section 50700 is new. It is added for drafting convenience.

§ 50705. Permit required

50705. (a) Sea urchins shall not be taken for a commercial purpose except under a valid sea urchin diving permit issued to that person that has not been suspended or revoked, subject to regulations adopted by the commission.

(b) The fee for a sea urchin diving permit is three hundred thirty dollars (\$330).

(c) The commission may, whenever necessary to prevent overutilization, or to ensure efficient and economic operation of the fishery, limit the number of permits that may be issued.

(d) The commission, as it determines appropriate to protect the resource, may limit the number of permits, either on a statewide basis or within selected geographical areas.

Comment. Subdivision (a) of Section 50705 continues the first sentence of former Fish and Game Code Section 9054 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 9055 without substantive change.

Subdivision (c) continues the third sentence of former Fish and Game Code Section 9054 without substantive change.

Subdivision (d) continues the fourth sentence of former Fish and Game Code Section 9054 without substantive change.

1 **§ 50710. Allowed appliances**

2 50710. Rakes, airlifts, or other handheld appliances may be used to take sea
3 urchins.

4 **Comment.** Section 50710 continues the second sentence of former Fish and Game Code
5 Section 9054 without change.

6 **PART 15. SHRIMP AND PRAWNS**

7 **TITLE 1. SHRIMP AND PRAWNS GENERALLY**

8 **§ 50850. Crustacean**

9 50850. For the purposes of Title 2 (commencing with Section 45400) of Part 3,
10 shrimp and prawns are crustaceans.

11 **Comment.** Section 50850 is new. It is added for drafting convenience.

12 **§ 50855. Provisions not exclusive**

13 50855. The provisions of this part are not intended to be exclusive. Other
14 provisions that govern shrimp or prawns include, but are not limited to, the
15 following provisions:

16 (a) Section 12165.

17 (b) Section 16110.

18 (c) Section 19805.

19 (d) Section 20710.

20 (e) Section 23355.

21 **Comment.** Section 50855 is new. It is added for drafting convenience.

22 **TITLE 2. COMMERCIAL PROVISIONS**

23 **CHAPTER 1. PRELIMINARY PROVISIONS**

24 **§ 50950. Application of title**

25 50950. For purposes of Section 45005, the provisions in this title are commercial
26 provisions.

27 **Comment.** Section 50950 is new. It is added for drafting convenience.

28 **§ 50955. “Shrimp” or prawns”**

29 50955. For the purposes of this title, “shrimp” or “prawns,” or both, include all
30 of the following species:

31 (1) Spot prawn (*Pandalus platyceros*).

32 (2) Ridgeback prawn (*Sicyonia ingentis*).

33 (3) Coonstrip prawn (*Pandalus danae*).

34 (4) Pacific ocean shrimp (*Pandalus jordani*).

1 (5) Bay shrimp (*Crangon franciscorum* and *Crango* sp.).

2 (6) Red rock shrimp (*Lysmata californica*).

3 **Comment.** Section 50955 continues former Fish and Game Code Section 8590 without
4 substantive change.

5 CHAPTER 2. TAKE

6 Article 1. General Provisions

7 § 51000. Take generally allowed

8 51000. Except as provided in this chapter, prawns or shrimp may be taken in any
9 waters of the state.

10 **Comment.** Section 51000 continues former Fish and Game Code Section 8593 without
11 substantive change.

12 § 51005. Take for commercial purpose

13 51005. Prawns or shrimp may be taken for a commercial purpose under the
14 regulations of the commission.

15 **Comment.** Section 51005 continues former Fish and Game Code Section 8591 without
16 substantive change.

17 § 51010. Required bycatch reduction device

18 51010. (a) Commencing April 1, 2006, it is unlawful to fish commercially for
19 prawns or pink shrimp, unless an approved bycatch reduction device is used with
20 each net.

21 (b) On or before April 1, 2006, the commission shall approve one or more
22 bycatch reduction devices for use in the bottom trawl fishery. For purposes of this
23 subdivision, a rigid grate fish excluder device is the approved type of bycatch
24 reduction device unless the commission, the Pacific Marine Fishery Management
25 Council, or the National Marine Fisheries Service determines that a different type
26 of fish excluder device has an equal or greater effectiveness at reducing bycatch. If
27 the commission does not approve a bycatch reduction device prior to April 1,
28 2006, then a device that is approved by the Pacific Marine Fishery Management
29 Council or the National Marine Fisheries Service shall be deemed approved by the
30 commission.

31 (c) This section does not apply to the use of trawl nets pursuant to a scientific
32 research permit.

33 **Comment.** Subdivisions (a) and (b) of Section 51010 continue former Fish and Game Code
34 Section 8841(g) without substantive change.

35 Subdivision (c) continues former Fish and Game Code Section 8841(i) without change.

1 **§ 51015. Use of traps**

2 51015. (a) Except as otherwise provided in this chapter, prawns or shrimp may
3 be taken with a prawn trap or shrimp trap under a general trap permit issued
4 pursuant to Section 19205.

5 (b) Prawns or shrimp may be taken for a commercial purpose in either a prawn
6 trap or a shrimp trap, subject to Title 6 (commencing with Section 19200) of Part 4
7 of Division 6.

8 (c) A prawn trap or a shrimp trap shall be six feet or less in its greatest
9 dimension. Every opening from the exterior to the interior of a prawn trap or a
10 shrimp trap shall be five inches or less in any dimension.

11 (d) No other species shall be taken in a prawn trap or a shrimp trap. Any other
12 species taken incidentally with a prawn trap or a shrimp trap shall be immediately
13 released.

14 **Comment.** Subdivision (a) of Section 51015 continues former Fish and Game Code Section
15 9015(a) without substantive change.

16 Subdivision (b) continues the second part of former Fish and Game Code Section 8595(a)
17 without substantive change.

18 Subdivision (c) continues former Fish and Game Code Section 9015(b) without change.

19 Subdivision (d) continues former Fish and Game Code Section 8595(b) without change.

20 Article 2. Geographic Restrictions

21 **§ 51050. Take south of Point Concepcion**

22 51050. From Point Concepcion south to the Mexican border, shrimp may be
23 taken with prawn or shrimp traps only in waters 50 fathoms or greater in depth.

24 **Comment.** Section 51050 continues former Fish and Game Code Section 8594 without
25 change.

26 Article 3. Use of Trawl Nets

27 **§ 51100. Permit**

28 51100. Subject to Chapter 8 (commencing with Section 16100) of Title 3 of Part
29 6 of Division 6, and Section 51010, prawns or shrimp may be taken for a
30 commercial purpose with a trawl net of a design prescribed by the commission,
31 pursuant to a permit issued by the department and under regulations adopted by
32 the commission.

33 (b) Section 16150, and Article 3 (commencing with Section 16250) of Chapter 8
34 of Title 3 of Part 6 of Division 6 do not apply to trawl nets used or possessed
35 under a permit issued pursuant to this section.

36 **Comment.** Subdivision (a) of Section 51100 combines and restates the first part of former Fish
37 and Game Code Section 8595(a) and the first paragraph of former Fish and Game Code Section
38 8842(a) without substantive change.

39 Subdivision (b) continues the second paragraph of former Fish and Game Code Section
40 8842(a) without substantive change.

1 **Note.** Proposed Section 51100(a) is intended to combine and restate the first part of former
2 Fish and Game Code Section 8595(a) and the first paragraph of former Fish and Game Code
3 Section 8842(a) to clarify the meaning of those provisions, without changing their substantive
4 effect. The existing provisions read as follows:

5 “8595. (a) Prawns or shrimp may be taken for commercial purposes with a trawl net, subject to
6 Article 10 (commencing with Section 8830) of Chapter 3,....

7 8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to
8 take shrimps or prawns under a permit issued by the department under regulations adopted by the
9 commission.”

10 **The Commission invites comment on whether the combining and restatement of these two**
11 **provisions would cause any substantive change in the meaning of either.**

12 **§ 51105. Geographic restrictions**

13 51105. (a) Trawling for prawns or shrimp shall be authorized only in those
14 waters of Districts 2570, 2575, 2590, 2615, 2620, and 2625 that lie not less than
15 three nautical miles from the nearest point of land on the mainland shore, and all
16 offshore islands and the boundary line of District 2630.

17 (b) The commission shall permit the taking of pink shrimp not less than two
18 nautical miles from shore in waters that lie between a line extending due west
19 from False Cape and a line extending due west from Point Reyes from the nearest
20 point of land on the mainland shore, if the commission finds that, upon review of
21 information from the federal groundfish observer program and other available
22 research and monitoring information that it determines relevant, the use of trawl
23 gear minimizes bycatch, will not damage seafloor habitat, will not adversely affect
24 ecosystem health, and will not impede reasonable restoration of kelp, coral, or
25 other biogenic habitats. The commission shall pay special attention to areas where
26 kelp and other biogenic habitats existed and where restoring those habitats is
27 feasible, and to hard bottom areas and other substrate that may be particularly
28 sensitive to bottom trawl impacts in making that finding.

29 **Comment.** Subdivision (a) of Section 51105 continues former Fish and Game Code Section
30 8842(b) without substantive change. A stated exception to the provision, expressly expiring on
31 January 1, 2008, is discontinued.

32 Subdivision (b) continues former Fish and Game Code Section 8842(d) without change.

33 **§ 51110. Incidental take while fishing for pink shrimp**

34 51110. When fishing for pink shrimp (*Pandalus jordani*) under a permit issued
35 pursuant to Section 51100, it is unlawful to possess in excess of 1,500 pounds of
36 incidentally taken fish per calendar day of a fishing trip, except Pacific whiting,
37 shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount
38 not in excess of federal regulations.

39 **Comment.** Section 51110 continues the first sentence of former Fish and Game Code Section
40 8842(c) without substantive change.

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substantive change.

§ 51405. Unlawful activities in District 2590

51405. (a) In District 2590, it is unlawful to engage in the following activities:

(1) Attract squid by a light displayed from any vessel, except a vessel deploying nets for the take, possession, and landing of squid or from the seine skiff of the vessel deploying nets for the take, possession, and landing of squid.

(2) Attract squid by a light displayed from any vessel whose primary purpose is not the deployment, or assisting in the deployment, of nets for the take, possession, and landing of squid.

(3) To encircle any vessel, other than by the seine skiff of a vessel deploying nets for the take, possession, and landing of squid, while that vessel is engaged in the taking of squid.

(b) For purposes of this section, “seine skiff” means a vessel that meets all of the following requirements:

(1) It is not licensed by the federal government or registered by the Department of Motor Vehicles.

(2) It is used to assist a larger federally-licensed or state-registered fishing vessel by assisting in the deployment and retrieval of nets and the landing of fish.

(3) It travels with that larger fishing vessel at all times.

(4) It is used solely at the direction of the operator of the larger fishing vessel.

(5) It is owned by the owner of the larger fishing vessel.

Comment. Section 51405 continues former Fish and Game Code Section 8399.1 without substantive change.

Notes. The Commission notes the following ambiguities in the language of existing Section 8399.1(a):

(1) Under Section 8399.1(a)(1), may light be displayed to attract squid from the *seine skiff* of a vessel deploying squid nets? If so, does the seine skiff have to itself be concurrently deploying nets?

(2) In Section 8399.1(a)(3), which “vessel” is the object of the reference “while that vessel is engaged in the taking of squid” at the end of the provision – the vessel deploying squid nets with a seine skiff, or the vessel that is being encircled?

The Commission invites comment on these questions.

CHAPTER 3. MARKET SQUID

§ 51450. Legislative declaration

51450. (a) The Legislature finds and declares that the fishery for market squid (*Loligo opalescens*) is the state’s largest fishery by volume, generating millions of dollars of income to the state annually from domestic and foreign sales. In addition to supporting an important commercial fishery, the market squid resource is important to the recreational fishery and is forage for other fish taken for commercial and recreational purposes, as well as for marine mammals, birds, and other marine life. The growing international market for squid and declining squid

1 production from other parts of the world has resulted in an increased demand for
2 California market squid, which, in turn, has led to newer, larger, and more
3 efficient vessels entering the fishery and increased processing capacity.

4 (b) The Legislature finds that the lack of research on market squid and the lack
5 of annual at-sea surveys to determine the status of the resource, combined with the
6 increased demand for, and fishing effort on, market squid could result in
7 overfishing of the resource, damaging the resource, and financially harming those
8 persons engaged in the taking, landing, processing, and sale of market squid.

9 (c) The Legislature further finds that some individuals, vessels, and processing
10 plants engaged in the market squid fishery have no other viable alternative
11 fisheries available to them and that a decline or a loss of the market squid resource
12 would cause economic devastation to the individuals or corporations engaged in
13 the market squid fishery.

14 (d) The Legislature declares that to prevent excessive fishing effort in the market
15 squid fishery and to develop a plan for the sustainable harvest of market squid, it is
16 necessary to adopt and implement a fishery management plan for the California
17 market squid fishery that sustains both the squid population and the marine life
18 that depends on squid.

19 (e) The Legislature finds that a sustainable California market squid fishery can
20 best be ensured through ongoing oversight and management of the fishery by the
21 commission. With regard to the market squid fishery, the Legislature urges that
22 any limited entry component of a fishery management plan, if necessary, should
23 be adopted for the primary purpose of protecting the resource and not simply for
24 the purpose of diminishing or advancing the economic interests of any particular
25 individual or group.

26 **Comment.** Section 51450 continues former Fish and Game Code Section 8420 without
27 change.

28 **§ 51455. Purchase of squid from vessel**

29 51455. (a) No person shall purchase squid from a vessel or vessels unless that
30 person holds a license issued pursuant to subdivision (a) of Section 20205 or
31 pursuant to Section 20450, employs a certified weighmaster, and the facilities
32 operated by the person are located on a permanent, fixed location.

33 (b) Notwithstanding any other provision of law, this section shall not apply to
34 the transfer at sea of squid for live bait in an amount less than 200 pounds in a
35 calendar day.

36 **Comment.** Section 51455 continues former Fish and Game Code Section 8424 without
37 substantive change.

38 **§ 51460. Adoption of fishery management plan and regulations**

39 51460. The commission, after consideration of the report and recommendations
40 prepared by the department pursuant to subdivision (c) of former Section 8426,
41 and, after public hearings, shall adopt a market squid fishery management plan and

1 regulations to protect the squid resource and manage the squid fishery at a level
2 that sustains healthy squid populations, taking into account the level of fishing
3 effort and ecological factors, including, but not limited to, the species' role in the
4 marine ecosystem and oceanic conditions. The management plan shall be
5 consistent with the requirements of Title 3 (commencing with Section 12100) of
6 Part 4 of Division 6. Development of the plan shall be coordinated with the federal
7 Coastal Pelagic Species Fishery Management Plan.

8 **Comment.** Section 51460 continues former Fish and Game Code Section 8425(a) without
9 substantive change.

10 **§ 51465. Management of fishery**

11 51465. The commission shall manage the squid fishery in accordance with the
12 requirements of Title 3 (commencing with Section 12100) of Part 4 of Division 6.

13 **Comment.** Section 51465 continues former Fish and Game Code Section 8425(b) without
14 substantive change.

15 **§ 51470. Permit fee**

16 51470. (a) The fee for a commercial market squid vessel permit and for a
17 commercial squid light boat owner's permit shall be established annually by the
18 commission.

19 (b) The total amount of fees collected pursuant to this section, including any
20 revenue derived from any other appropriate source, as determined and allocated by
21 the commission, shall not exceed the department's and the commission's costs for
22 managing the market squid fishery pursuant to Sections 51460 and 51465.

23 (c) The fees collected pursuant to this chapter shall be used only for the
24 management of the market squid fishery pursuant to Sections 51460 and 51465.

25 **Comment.** Section 51470 continues former Fish and Game Code Section 8428 without
26 substantive change.

27 **§ 51475. Statements relating to permit**

28 51475. Any statement made to the department, orally or in writing, relating to a
29 permit issued under this chapter, shall be made under penalty of perjury.

30 **Comment.** Section 51475 continues the first sentence of former Fish and Game Code Section
31 8429 without substantive change.

32 **§ 51480. Revocations based on submission of material false statements**

33 51480. The commission shall revoke the commercial fishing license, the
34 commercial boat registration of any vessel, and, if applicable, any licenses issued
35 pursuant to Section 20205, 20400, or 20450, that are held by any person
36 submitting material false statements, as determined by the commission, for the
37 purpose of obtaining a commercial market squid vessel permit or a commercial or
38 light boat owner's permit.

39 **Comment.** Section 51480 continues the second sentence of former Fish and Game Code
40 Section 8429 without substantive change.

Note. Commission research suggests that, in addition to the two market squid permits listed in the second sentence of existing Section 8429 (which would be continued by proposed Section 51480), a third type of market squid permit is now available, a market squid bait permit.

Should proposed Section 51480 be revised to make it applicable to this permit as well?

§ 51485. No limit on authority of director or commission

51485. Notwithstanding any other provision of law, nothing in this chapter shall prohibit or otherwise limit the authority of the director or the commission under any other law.

Comment. Section 51485 continues former Fish and Game Code Section 8429.5 without substantive change.

§ 51490. Inoperative date of sections

51490. Sections 8420.5 to 8423.5, inclusive, and Sections 8426 and 8427 shall become inoperative upon the adoption by the commission of a market squid fishery management plan and the adoption of implementing regulations pursuant to Section 51460, and are repealed six months thereafter.

Comment. Section 51490 continues former Fish and Game Code Section 8429.7 without substantive change.

Note. It is the Commission's understanding that the management plan referenced in existing Section 8429.7 has been adopted, as have implementing regulations. Further, all sections that would be rendered inoperative and repealed by existing Fish and Game Code Section 8429.7 (which would be continued by proposed Section 49590) have already been repealed.

The Commission invites comment on whether existing Section 8429.7 is therefore obsolete and need not be continued in the proposed law.

CHAPTER 4. MISCELLANEOUS PROVISIONS

§ 51600. Unloading for use in cannery

51600. (a) No squid intended for or used in any cannery shall be unloaded from any vessel, except at a weighing or measuring device approved by the Bureau of Weights and Measures.

(b) Those squid shall be weighed by a public weighmaster licensed as an individual under the laws of this state, and a receipt as to that weight shall be immediately issued by the weighmaster to the commercial fisherman at the time of receipt of the products.

(c) Copies of the receipt shall be handled in the manner provided in Chapter 3 (commencing with Section 21000) and Chapter 4 (commencing with Section 21200) of Title 10 of Part 4 of Division 6.

Comment. Section 51600 continues the part of former Fish and Game Code Section 7702.1 applicable to squid without substantive change.

DIVISION 12. AMPHIBIANS

PART 1. GENERAL PROVISIONS

§ 51900. Governance by other provisions

51900. Animals governed by this division are also governed by other provisions of this code, including but not limited to Divisions 6 (commencing with Section 8000) and 7 (commencing with Section 23300).

Comment. Section 51900 is new. It is added for drafting convenience.

§ 51905. Use as bait

51905. An amphibian may be used for bait, or released in the same waters from which it was taken.

Comment. Section 51905 continues the part of former Fish and Game Code Section 5505 applicable to amphibians without substantive change.

PART 2. DISEASE CONTROL

§ 52000. Application of title

52000. (a) This part applies to all amphibians, including, but not limited to, amphibians being imported or transported.

(b) This part does not apply to activities governed by Part 1 (commencing with Section 23300) of Division 7.

Comment. Section 52000 continues the part of former Fish and Game Code Section 6300 applicable to amphibians without substantive change.

§ 52005. Authorized entry by department

52005. The department may enter at any time any vehicle, container, warehouse, depot, ship, or growing area where any amphibians are held, transported, or stored, for the purpose of making a regulatory inspection to ascertain whether those amphibians are infected, diseased, or parasitized, or to determine if aquaculture products are being or have been legally imported, transported, or possessed.

Comment. Section 52005 continues the part of former Fish and Game Code Section 6301 applicable to amphibians without change.

§ 52010. Public nuisance

52010. Except as otherwise provided in Part 1 (commencing with Section 23300) of Division 7, all amphibians found to be infected, diseased, or parasitized are a public nuisance and shall be summarily destroyed by the department.

Comment. Section 52010 continues the part of former Fish and Game Code Section 6302 applicable to amphibians without substantive change.

1 **§ 52015. Conditional destruction**

2 52015. All amphibians that the department determines are merely deleterious to
3 fish amphibians, aquatic plants, or aquatic animal life, shall be destroyed by the
4 department, unless the owner or person in charge of the amphibians ships them out
5 of the state within a period of time to be specified by the department.

6 **Comment.** Section 52015 continues the part of former Fish and Game Code Section 6303
7 applicable to amphibians without substantive change.

8 **§ 52020. Posting of notices**

9 52020. (a) If the department finds any infected, diseased, or parasitized
10 amphibians within this state, the department shall post notices describing, as
11 nearly as possible, the boundaries of the area within which the amphibians are
12 found, and shall state the period during which the taking, carrying, and
13 transportation of the amphibians from the area shall be unlawful.

14 (b) The fact of posting the notices shall be published once a week for four
15 successive weeks in some newspaper of general circulation in the county in which
16 the infected area is situated, and, if there is no newspaper of general circulation in
17 that county, then in a newspaper of general circulation published in an adjoining
18 county.

19 **Comment.** Section 52020 continues the part of former Fish and Game Code Section 6304
20 applicable to amphibians without substantive change.

21 **§ 52025. Prohibited transportation within state**

22 52025. It is unlawful to carry or cause to be carried from one point in this state
23 which has been posted according to the provisions of this article, to any other
24 point in this state, any infected, diseased, or parasitized amphibian.

25 **Comment.** Section 52025 continues the part of former Fish and Game Code Section 6305
26 applicable to amphibians without substantive change.

27 **§ 52030. Expense of examination**

28 52030. The expense of any examination of any amphibian made necessary by
29 the provisions of this code shall be borne by the owner of the amphibian, or the
30 person or persons importing the amphibian into this state.

31 **Comment.** Section 52030 continues the part of former Fish and Game Code Section 6306
32 applicable to amphibians without substantive change.

PART 3. CLASSES OF AMPHIBIANS

TITLE 1. FULLY PROTECTED AMPHIBIANS

§ 52200. Prohibition on take and possession

52200. (a) Except as provided in this section, **Section 2081.7, Section 2081.9, or Section 2835**, a fully protected amphibian may not be taken or possessed at any time.

(b) No provision of this code or any other law shall be construed to authorize the issuance of a permit or license to take a fully protected amphibian, and no permit or license previously issued shall have any force or effect for that purpose. However, the department may authorize the taking of a fully protected amphibian for necessary scientific research, including efforts to recover fully protected, threatened, or endangered species.

(c) Before authorizing the take of a fully protected amphibian, the department shall make an effort to notify all affected and interested parties to solicit information and comments on the proposed authorization. The notification shall be published in the California Regulatory Notice Register and be made available to each person who has notified the department, in writing, of his or her interest in fully protected species and who has provided an email address, if available, or postal address to the department. Affected and interested parties shall have 30 days after notification is published in the California Regulatory Notice Register to provide relevant information and comments on the proposed authorization.

(d) A legally imported fully protected amphibian may be possessed under a permit issued by the department.

(e) Except as otherwise provided in Section 597 of the Penal Code, the punishment for a violation of this section is a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than one year, or both the fine and imprisonment.

(f) The judge before whom any person is tried for a violation of this section may, in the court's discretion and upon the conviction of that person, order the forfeiture of any proceeds resulting from the taking of the fully amphibian.

(g) As used in this section, "scientific research" does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

Comment. Subdivisions (a)-(d) and (g) of Section 52200 continues the part of former Fish and Game Code Section 5050(a) applicable to amphibians without substantive change.

Subdivision (e) continues the part of former Fish and Game Code Section 12008(d) applicable to amphibians without substantive change.

Subdivision (f) continues the part of former Fish and Game Code Section 12159.5 applicable to fully protected amphibians without substantive change.

1 TITLE 2. NATIVE AMPHIBIANS

2 § 52300. “Native amphibian”

3 52300. “Native amphibian” as used in this title means a salamander, toad, or any
4 other member of the class amphibia native to California.

5 **Comment.** Section 52300 continues former Fish and Game Code Section 6895 without
6 substantive change.

7 § 52305. Commission to establish rules

8 52305. Except as otherwise provided in this title and Part 4 (commencing with
9 Section 52400), the commission shall establish rules for the commercial take, sale,
10 transport, export, or import of native amphibians.

11 **Comment.** Section 52305 continues former Fish and Game Code Section 6896 without
12 substantive change.

13 PART 4. SPECIFIC TYPES OF AMPHIBIANS

14 TITLE 1. FROGS

15 CHAPTER 1. PRELIMINARY PROVISIONS

16 § 52400. “Frog”

17 52400. As used in this title, “frog” means all species of frog.

18 **Comment.** Section 52400 continues former Fish and Game Code Section 6850 without
19 substantive change.

20 § 52405. Provisions not exclusive

21 52405. The provisions of this title are not intended to be exclusive. Other
22 provisions that govern frogs include, but are not limited to, the following
23 provisions:

24 (a) Section 8115.

25 (b) Section 23355.

26 **Comment.** Section 52405 is new. It is added for drafting convenience.

27 CHAPTER 2. TAKE OR POSSESSION

28 § 52450. General prohibition on take or possession

29 52450. (a) Except as otherwise provided in this code or in regulations adopted
30 by the commission, it is unlawful to take or possess any frog for a commercial
31 purpose.

32 (b) This chapter does not apply to frogs grown pursuant to Part 1 (commencing
33 with Section 23300) of Division 7.

1 **Comment.** Section 52450 continues former Fish and Game Code Section 6851 without
2 substantive change.

3 **§ 52455. Prohibited take by firearm**

4 52455. It is unlawful to take frogs by the use of firearms of any caliber or type.

5 **Comment.** Section 52455 continues former Fish and Game Code Section 6854 without
6 change.

7 **§ 52460. Lawful possession limited to authorized number of frogs**

8 52460. Any person who conducts a place of business where frogs are sold to the
9 public for food, or who takes or possesses frogs for sale to or for use by
10 educational or scientific institutions for scientific purposes, may possess at the
11 place of business only the number of frogs that have been legally obtained
12 pursuant to this code or regulations adopted by the commission.

13 **Comment.** Section 52460 continues former Fish and Game Code Section 6852 without
14 change.

15 **§ 52465. Disposal permit**

16 52465. The department may issue a permit to take and dispose of frogs under
17 any limitations the commission may prescribe, when in the judgment of the
18 department, frogs are polluting the water supply in any area, or otherwise
19 constitute a nuisance.

20 **Comment.** Section 52465 continues former Fish and Game Code Section 6855 without
21 substantive change.

22 CHAPTER 3. FROG JUMPING CONTESTS

23 **§ 52500. “Frog-jumping contest”**

24 52500. As used in this chapter, “frog-jumping contest” means a contest
25 generally and popularly known as a frog-jumping contest, which is open to the
26 public and is advertised or announced in a newspaper.

27 **Comment.** Section 52500 continues former Fish and Game Code Section 6880 without
28 substantive change.

29 **§ 52505. Applicability of chapter**


30 52505. The provisions of this chapter apply only to a frog that satisfies all the
31 following requirements:

32 (a) The frog is taken by a means and in a manner that normally would not
33 seriously injure the frog.

34 (b) The frog is to be used in a frog-jumping contest.

35 (c) The frog is kept in a manner that will reasonably preserve its life.

36 **Comment.** Section 52505 combines and restates the first sentence of former Fish and Game
37 Code Section 6881, Section 6882, and Section 6884, without substantive change.

38  Note. Proposed Section 52505 is intended to combine and restate the first sentence of former

1 Fish and Game Code Section 6881, Section 6882, and Section 6884, to clarify the meaning of
2 those provisions without changing their substantive effect. The existing provisions read as
3 follows:

4 “6881. Frogs to be used in frog-jumping contests shall be governed by this article only.

5 6882. If the means used for taking such frogs can, as normally used, seriously injure the frog, it
6 shall be conclusively presumed the taking is not for the purposes of a frog-jumping contest.

7 6884. A frog which is not kept in a manner which is reasonable to preserve its life is not within
8 the coverage of this article.”

9 **The Commission invites comment on whether the proposed combination and restatement**
10 **of these provisions would cause any substantive change in their meaning.**

11 **§ 52510. Exemption from other law**

12 52510. A frog that is governed by this chapter may be taken at any time, without
13 a license or permit.

14 **Comment.** Section 52510 continues the second sentence of former Fish and Game Code
15 Section 6881 without substantive change.

16 **§ 52515. Disposition of dead frog**

17 52515. A person may possess any number of live frogs to use in frog-jumping
18 contests, but if a frog possessed for that purpose dies or is killed, it must be
19 destroyed as soon as possible, and may not be eaten or otherwise used for any
20 purpose.

21 **Comment.** Section 52515 continues former Fish and Game Code Section 6883 without
22 substantive change.

23 **§ 52520. No modification of provision by commission**

24 52520. The commission has no power to modify a provision of this chapter by
25 any order, rule, or regulation.

26 **Comment.** Section 52520 continues former Fish and Game Code Section 6885 without
27 substantive change.

28 **DIVISION 13. REPTILES**

29 **PART 1. GENERAL PROVISIONS**

30 **§ 52800. Governance by other provisions**

31 52800. Animals governed by this division are also governed by other provisions
32 of this code, including but not limited to Divisions 6 (commencing with Section
33 8000) and 7 (commencing with Section 23300).

34 **Comment.** Section 52800 is new. It is added for drafting convenience.

1 § 52805. “Sport fishing”

2 52805. “Sport fishing” includes the take of a reptile, for a purpose other than
3 profit.

4 **Comment.** Section 52805 is new, and added for drafting convenience. See Section 615 (“sport
5 fishing”).

6 PART 2. DISEASE CONTROL *[RESERVED]*

7 PART 3. CLASSES OF REPTILES

8 TITLE 1. FULLY PROTECTED REPTILES

9 § 53000. Prohibition on take and possession

10 53000. (a) Except as provided in this section, **Section 2081.7, Section 2081.9,**
11 **or Section 2835**, a fully protected reptile may not be taken or possessed at any
12 time.

13 (b) No provision of this code or any other law shall be construed to authorize the
14 issuance of a permit or license to take a fully protected reptile, and no permit or
15 license previously issued shall have any force or effect for that purpose. However,
16 the department may authorize the taking of a fully protected reptile for necessary
17 scientific research, including efforts to recover fully protected, threatened, or
18 endangered species.

19 (c) Before authorizing the take of a fully protected reptile, the department shall
20 make an effort to notify all affected and interested parties to solicit information
21 and comments on the proposed authorization. The notification shall be published
22 in the California Regulatory Notice Register and be made available to each person
23 who has notified the department, in writing, of his or her interest in fully protected
24 species and who has provided an email address, if available, or postal address to
25 the department. Affected and interested parties shall have 30 days after
26 notification is published in the California Regulatory Notice Register to provide
27 relevant information and comments on the proposed authorization.

28 (d) A legally imported fully protected reptile may be possessed under a permit
29 issued by the department.

30 (e) Except as otherwise provided in Section 597 of the Penal Code, the
31 punishment for a violation of this section is a fine of not more than five thousand
32 dollars (\$5,000) or imprisonment in the county jail for not more than one year, or
33 both the fine and imprisonment.

34 (f) The judge before whom any person is tried for a violation of this section
35 may, in the court’s discretion and upon the conviction of that person, order the
36 forfeiture of any proceeds resulting from the taking of the fully protected reptile.

(g) As used in this section, “scientific research” does not include an action taken as part of specified mitigation for a project, as defined in Section 21065 of the Public Resources Code.

Comment. Subdivisions (a)-(d) and (g) of Section 53000 continues the part of former Fish and Game Code Section 5050(a) applicable to reptiles without substantive change.

Subdivision (e) continues the part of former Fish and Game Code Section 12008(d) applicable to reptiles without substantive change.

Subdivision (f) continues the part of former Fish and Game Code Section 12159.5 applicable to fully protected reptiles without substantive change.

TITLE 2. NATIVE REPTILES

§ 53100. “Native reptiles”

53100. For purposes of this title, “native reptiles” means snakes, lizards, turtles, or any other members of the class reptilia native to California.

Comment. Section 53100 continues former Fish and Game Code Section 5060 without substantive change.

§ 53105. Commission to establish rules and regulations

53105. The commission shall establish rules and regulations for the commercial take, sale, transport, export, or import of native reptiles.

Comment. Section 53105 continues former Fish and Game Code Section 5061 without change.

PART 4. SPECIFIC TYPES OF REPTILES

TITLE 1. ALLIGATORS AND RELATED ANIMALS

§ 53200. Use or sale of meat or hides

53200. Notwithstanding any other provision of law, no permit shall be issued or renewed for the operation of a farm for alligators or any species of the family crocodylidae, if the animals are kept for the use and sale of the meat or hides.

Comment. Section 53200 continues former Fish and Game Code Section 5062 without substantive change.

TITLE 2. RATTLESNAKES

§ 53250. Take

53250. Notwithstanding Section 12900, a sport fishing license is not required for a resident to take a rattlesnake (genus *Crotalus* or *Sistrurus*).

Comment. Section 53250 continues former Fish and Game Code Section 7149.3 without substantive change.

TITLE 3. TORTOISES AND TURTLES

§ 53300. Provisions not exclusive

53300. The provisions of this title are not intended to be exclusive. Other provisions that govern tortoises include, but are not limited to, **Section 2720**.

Comment. Section 53300 is new. It is added for drafting convenience.

§ 53305. General prohibitions

53305. It is unlawful to sell, purchase, harm, take, possess, transport, or shoot a projectile at, a tortoise (Gopherus). This section does not apply to the taking of a tortoise when authorized by the department.

Comment. Section 53305 continues former Fish and Game Code Section 5000 without change.

§ 53310. Possession by institutions or gardens

53310. The department may issue permits, subject to any terms and conditions prescribed by the commission, authorizing the possession of a tortoise (Gopherus), or product of a tortoise, by an educational or scientific institution or a public zoological garden.

Comment. Section 53310 continues former Fish and Game Code Section 5002 without substantive change.

§ 53315. Tortoises acquired before 1973

53315. (a) The provisions of Section 53305 do not prohibit the possession of any tortoise (Gopherus) whose owner can demonstrate that the tortoise was legally acquired and possessed before January 1, 1973.

(b) The owner of a tortoise whose possession is authorized by this section shall mark or otherwise identify the tortoise to the satisfaction of the department, and shall not transfer the tortoise to any other person without prior approval of the department.

Comment. Section 53315 continues former Fish and Game Code Section 5001 without substantive change.

DIVISION 14. PLANTS

PART 1. GENERAL PROVISIONS

§ 53500. Governance by other provisions

53500. Plants governed by this division are also governed by other provisions of this code, including but not limited to Division 7 (commencing with Section 23300).

1 **Comment.** Section 53500 is new. It makes clear that this division does not contain the only
2 provisions of the code governing plants, and that plants governed by this division are also
3 governed by other law.

4 PART 2. DISEASE CONTROL

5 TITLE 1. AQUATIC PLANTS

6 **§ 53600. Application of title**

7 53600. This title does not apply to activities governed by Part 1 (commencing
8 with Section 23300) of Division 7.

9 **Comment.** Section 53600 continues the second sentence of former Fish and Game Code
10 Section 6300, without substantive change. The first sentence of Section 6300 is not continued
11 because it does not apply to plants.

12 **§ 53605. Inspection**

13 53605. The department may enter at any time any vehicle, container, warehouse,
14 depot, ship, or growing area where any aquatic plants are held, transported, or
15 stored, for the purpose of making a regulatory inspection to ascertain whether
16 those aquatic plants are infected, diseased, or parasitized, or to determine if
17 aquaculture products are being or have been legally imported, transported, or
18 possessed.

19 **Comment.** Section 53605 continues the part of former Fish and Game Code Section 6301
20 applicable to plants, without substantive change.

21 **§ 53610. Public nuisance**

22 53610. Except as otherwise provided in Part 1 (commencing with Section
23 23300) of Division 7, all aquatic plants found to be infected, diseased, or
24 parasitized are a public nuisance and shall be summarily destroyed by the
25 department.

26 **Comment.** Section 53610 continues the part of former Fish and Game Code Section 6302
27 applicable to plants, without substantive change.

28 **§ 53615. Deleterious plants**

29 53615. All aquatic plants that the department determines are merely deleterious
30 to fish, amphibia, aquatic plants, or aquatic animal life, shall be destroyed by the
31 department, unless the owner or person in charge of the aquatic plants ships them
32 out of the State within a period of time to be specified by the department.

33 **Comment.** Section 53615 continues the part of former Fish and Game Code Section 6303
34 applicable to plants, without substantive change.

35 **§ 53620. Notices**

36 53620. (a) If the department finds any infected, diseased, or parasitized aquatic
37 plants within this state, the department shall post notices describing, as nearly as

possible, the boundaries of the area within which the aquatic plants are found, and shall state the period during which the taking, carrying, and transportation of the aquatic plants from the area shall be unlawful.

(b) The fact of posting the notices shall be published once a week for four successive weeks in some newspaper of general circulation in the county in which the infected area is situated, and, if there is no newspaper of general circulation in that county, then in a newspaper of general circulation published in an adjoining county.

Comment. Section 53620 continues the part of former Fish and Game Code Section 6304 applicable to plants, without substantive change.

§ 53625. Transportation within state

53625. It is unlawful to carry or cause to be carried from one point in this state which has been posted according to the provisions of this title, to any other point in this state, any infected, diseased, or parasitized aquatic plant.

Comment. Section 53625 continues the part of former Fish and Game Code Section 6305 applicable to plants, without substantive change.

§ 53630. Expense of examination

53630. The expense of any examination made necessary by the provisions of this code, shall be borne by the owner of the aquatic plants, or the person or persons importing them into this state.

Comment. Section 53630 continues the part of former Fish and Game Code Section 6306 applicable to plants, without substantive change.

PART 3. CLASSES OF PLANTS

TITLE 1. NATIVE PLANT PROTECTION ACT

§ 53800. Legislative intent

53800. (a) The intent of the Legislature and the purpose of this title is to preserve, protect, and enhance endangered or rare native plants of this state.

(b) The Legislature finds that many species and subspecies of native plants are endangered because their habitats are threatened with destruction, drastic modification, or severe curtailment, or because of commercial exploitation or by other means, or because of disease or other factors.

Comment. Section 53800 continues former Fish and Game Code Section 1900 without substantive change.

§ 53805. Criteria

53805. (a) The department shall establish criteria for determining if a species, subspecies, or variety of native plant is endangered or rare.

1 (b) A species, subspecies, or variety is endangered when its prospects of survival
2 and reproduction are in immediate jeopardy from one or more causes.

3 (c) A species, subspecies, or variety is rare when, although not presently
4 threatened with extinction, it is in such small numbers throughout its range that it
5 may become endangered if its present environment worsens.

6 **Comment.** Section 53805 continues former Fish and Game Code Section 1901 without
7 substantive change, except that the second sentence of former Section 1901 is continued in
8 Section 557 (“native plant” defined).

9 **§ 53810. Designation**

10 53810. The commission may, after public hearing, designate endangered and
11 rare native plants.

12 **Comment.** Section 53810 continues the first sentence of former Fish and Game Code Section
13 1904 without substantive change.

14 **§ 53815. Notice to affected land owner**

15 53815. To the extent that the location of endangered or rare native plants is
16 known, the department shall notify the owners of affected land that an endangered
17 or rare native plant is growing on that land and shall provide any information
18 about the protection of the plants that may be appropriate.

19 **Comment.** Section 53815 continues the second sentence of former Fish and Game Code
20 Section 1904 without substantive change.

21 **§ 53820. Prohibited activities**

22 53820. No person shall import into this state, or take, possess, or sell within this
23 state, except as incident to the possession or sale of the real property on which the
24 plant is growing, any native plant, or any part or product thereof, that the
25 commission determines to be an endangered native plant or rare native plant,
26 except as otherwise provided in this title.

27 **Comment.** Section 53820 continues former Fish and Game Code Section 1908 without
28 substantive change.

29 **§ 53825. Regulation**

30 53825. (a) The commission may adopt regulations governing the taking,
31 possession, propagation, transportation, exportation, importation, or sale of any
32 endangered or rare native plants. The regulations may include, but shall not be
33 limited to, requirements for persons who perform any of the foregoing activities to
34 maintain written records and to obtain permits that may be issued by the
35 department.

36 (b) Persons engaged in the production, storage, sale, delivery, or transportation
37 of nursery stock pursuant to the provisions of Part 3 (commencing with Section
38 6701) of Division 4 of the Food and Agricultural Code shall not be required to
39 obtain a permit pursuant to this chapter unless those activities involve the

1 collection of rare or endangered plants or parts or products thereof, growing in a
2 wild, uncultivated state.

3 (c) Persons who purchase nursery grown stock shall not be required to obtain a
4 permit pursuant to this title.


5 **Comment.** Section 53825 continues former Fish and Game Code Section 1907 without
6 substantive change.

7 **§ 53830. Enforcement authority**

8 53830. (a) When any power or authority is given by any provision of this title to
9 any person, it may be exercised by any deputy, inspector, or agent duly authorized
10 by that person.

11 (b) Any person in whom the enforcement of any provision of this title is vested
12 has the power of a peace officer as to the enforcement of this title. This
13 subdivision applies to any state or federal agencies, the State of Nevada, the State
14 of Oregon, or the State of Arizona, with which cooperative agreements have been
15 made by the department to enforce any provisions of this title.

16 **Comment.** Section 53830 restates former Fish and Game Code Section 1909 without
17 substantive change.

18  **Note.** Proposed Section 53830(b) would restate the second sentence of existing Section
19 6656 to improve its clarity, without changing its substantive effect. The existing provision reads
20 as follows:

21 “Any person in whom the enforcement of any provision of this chapter is vested has the power
22 of a peace officer as to such enforcement, which shall include state and federal agencies, and the
23 State of Nevada, State of Oregon, or State of Arizona with which cooperative agreements have
24 been made by the department to enforce any provisions of this chapter.”

25 **The Commission invites comment on whether that restatement would cause any**
26 **problems.**

27 **§ 53835. Arrest**

28 53835. A peace officer or an employee or agent of the department may, in the
29 enforcement of this title, make arrests without warrant for a violation of this title
30 that the officer, employee, or agent may witness, and may confiscate plants or
31 parts of plants when unlawfully taken, transported, possessed, sold, or otherwise,
32 in violation of this title.

33 **Comment.** Section 53835 continues the first sentence of former Fish and Game Code Section
34 1910 without substantive change.

35 **§ 53840. Application of Penal Code Section 384a**

36 53840. The provisions of this title are in addition to the provisions of Section
37 384a of the Penal Code.

38 **Comment.** Section 53840 continues the second sentence of former Fish and Game Code
39 Section 1910 without substantive change.

1 **§ 53845. State agency programs**

2 53845. All state departments and agencies shall, in consultation with the
3 department, utilize their authority in furtherance of the purposes of this title by
4 carrying out programs for the conservation of endangered or rare native plants.
5 Those programs include, but are not limited to, the identification, delineation, and
6 protection of habitat critical to the continued survival of endangered or rare native
7 plants.

8 **Comment.** Section 53845 continues former Fish and Game Code Section 1911 without
9 substantive change.

10 **§ 53850. Department activities**

11 53850. (a) The department may undertake botanical research and field
12 investigations and may collect and diffuse any statistics and information that
13 pertain to the conservation, protection, and perpetuation of native plants.

14 (b) Nothing in this code or any other law shall prohibit the department from
15 taking, for scientific or propagation purposes, any species of native plants. The
16 department may import, propagate, and distribute native plants.

17 **Comment.** Subdivision (a) of Section 53850 continues former Fish and Game Code Section
18 1905 without substantive change.

19 Subdivision (b) continues former Fish and Game Code Section 1906 without substantive
20 change.

21 **§ 53855. Exemptions**

22 53855. (a) The provisions of this title shall not be applicable to emergency work
23 necessary to protect life or property. However, the person or agency performing
24 the emergency work shall notify the department within 14 days of the
25 commencement of the work.

26 (b) The provisions of this title are not intended and shall not be construed as
27 authorizing any public agency to mandate, prescribe, or otherwise regulate
28 agricultural operations or management practices, including the clearing of land for
29 agricultural practices or fire control measures.

30 (c) Notwithstanding the provisions of Section 53845, timber operations in
31 accordance with a timber harvesting plan submitted pursuant to the provisions of
32 the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511
33 of the Public Resources Code), or required mining assessment work pursuant to
34 federal or state mining laws, or the removal of endangered or rare native plants
35 from a canal, lateral ditch, building site, or road, or other right-of-way by the
36 owner of the land or the owner's agent, or the performance by a public agency or a
37 publicly or privately owned public utility of its obligation to provide service to the
38 public, shall not be restricted by this title because of the presence of rare or
39 endangered plants, except as provided in subdivision (d).

40 (d) Notwithstanding the provisions of subdivisions (b) and (c), where the owner
41 of land has been notified by the department pursuant to Section 53815 that a rare
42 or endangered native plant is growing on the owner's land, the owner shall notify


the department at least 10 days in advance of changing the land use to allow for salvage of the plant. The failure by the department to salvage the plant within 10 days of notification shall entitle the owner of the land to proceed without regard to this title. Submission of a timber harvesting plan pursuant to the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511 of the Public Resources Code) shall constitute notice under this section. Converting from one type of agricultural use, as defined in Section 51201 of the Government Code, to another type of agricultural use shall not constitute a change in land use.

Comment. Subdivision (a) of Section 53855 continues former Fish and Game Code Section 1912 without substantive change.

Subdivision (b) continues former Fish and Game Code Section 1913(a) without substantive change.

Subdivision (c) continues former Fish and Game Code Section 1913(b) without substantive change.

Subdivision (d) continues former Fish and Game Code Section 1913(c) without substantive change.

 **Note.** Existing Section 1913(c) refers to landowner notice given pursuant to Section 1903.5. That section does not exist. In proposed Section 53855(d), the reference has been revised to refer to proposed Section 53815, which continues the second sentence of existing Section 1904. That provision requires notice to landowners when rare or endangered native plants are found on their land.

The Commission invites comment on whether that is the correct resolution of the erroneous cross-reference.

TITLE 2. CALIFORNIA DESERT NATIVE PLANTS

§ 53900. Department enforcement of Act

53900. The department shall enforce the provisions of the California Desert Native Plants Act, Division 23 (commencing with Section 80001) of the Food and Agricultural Code, except that permits, tags, seals, and wood receipts shall be issued pursuant to Chapter 4 (commencing with Section 80101) of Division 23 of the Food and Agricultural Code, by the county agricultural commissioner or the sheriff.

Comment. Section 53900 continues the first sentence of former Fish and Game Code Section 1925 without substantive change.

§ 53905. Cooperation with Department of Food and Agriculture

53905. In carrying out the provisions of this title, the department shall cooperate fully with the Department of Food and Agriculture.

Comment. Section 53905 continues former Fish and Game Code Section 1926 without substantive change.

1 **§ 53910. Effect of Act on department activities**

2 53910. Nothing in the California Desert Native Plants Act, or any other law,
3 prohibits the department from taking, for scientific or propagation purposes, any
4 species of native plants. The department may import, propagate, and distribute
5 native plants, and the California Desert Native Plants Act does not apply to those
6 activities.

7 **Comment.** Section 53910 continues the second sentence of former Fish and Game Code
8 Section 1925 without substantive change.

9 PART 4. SPECIFIC TYPES OF PLANTS

10 TITLE 1. KELP AND OTHER AQUATIC PLANTS

11 CHAPTER 1. GENERAL PROVISIONS

12 **§ 54000. Provisions not exclusive**

13 54000. The provisions of this title are not intended to be exclusive. Other
14 provisions may govern kelp and other aquatic plants.

15 **Comment.** Section 54000 is new.

16 **§ 54005. Commission rulemaking**

17 54005. The commission may make any regulations that may be necessary to
18 insure the proper harvesting of kelp and other aquatic plants.

19 **Comment.** Section 54005 continues former Fish and Game Code Section 6653 without
20 substantive change.

21 **§ 54010. Application of title**

22 54010. This title does not apply to aquatic plants grown on private land or on
23 state water bottoms leased pursuant to Part 1 (commencing with Section 23300) of
24 Division 7.

25 **Comment.** Section 54010 continues former Fish and Game Code Section 6651(c) without
26 substantive change.

27 CHAPTER 2. COMMERCIAL PROVISIONS

28 Article 1. Kelp Harvest License

29 **§ 54025. License requirement**

30 54025. Every person engaged in harvesting kelp or other aquatic plants for profit
31 in the waters of this state shall have a license for that purpose.

32 **Comment.** Section 54025 continues former Fish and Game Code Section 6650 without
33 substantive change.

1 **§ 54030. Issuance of license**

2 54030. (a) A license granting the privilege to harvest kelp or other aquatic plants
3 shall be issued upon application and the payment of a fee of one hundred dollars
4 (\$100) to the department. The license shall be valid from January 1 to December
5 31, inclusive, or, if issued after the beginning of that term, for the remainder of
6 that term.

7 (b) The commission shall adjust the amount of the fees specified in subdivision
8 (a), as necessary, to fully recover, but not exceed, all reasonable administrative
9 and implementation costs of the department and the commission relating to those
10 licenses.

11 **Comment.** Section 54030 continues former Fish and Game Code Section 6651(a)-(b) without
12 substantive change.

13 **§ 54035. License revocation or nonrenewal**

14 54035. (a) The commission may revoke a license and prohibit its reissuance for
15 a period of not more than one year, in either of the following circumstances:

16 (1) The licensee harvested kelp from a bed that was closed, after the department
17 served notice of the closure on the licensee and before the bed was reopened.

18 (2) The licensee violated any law or regulation of the commission relating to
19 kelp.

20 (b) A proceeding pursuant to this section shall be conducted at one of the
21 commission's regularly scheduled meetings.

22 **Comment.** Section 54035 restates former Fish and Game Code Section 6656 without
23 substantive change.

24 **Notes.** (1) Proposed Section 54035 would restate existing Section 6656 to improve its
25 clarity, without changing its substantive effect. The existing provision reads as follows:

26 “The commission may revoke and prohibit reissuance for a period of not more than one year,
27 the license of:

28 (a) Any person who harvests any kelp from a bed which is closed, between the time of service
29 of notice upon him or her of the closing of the bed and the decision of the commission upon a
30 hearing as to the necessity for the closing.

31 (b) Any person who violates any law or regulation of the commission relating to kelp.
32 The proceedings shall be conducted at one of the commission's regularly scheduled meetings.”

33 **The Commission invites comment on whether that restatement would cause any**
34 **substantive change in the meaning of the provision.**


35 (2) Existing Section 6656(a) provides a sanction for a person who harvests kelp from a bed that
36 is closed, after notice of the closure and before “the decision of the commission upon a hearing as
37 to the necessity for the closing.” The latter language refers to one way in which a bed closure can
38 end — if the commission decides, after an evidentiary hearing, that the closure is not necessary.
39 See existing Section 6655. However, that is not the only way that a closure can end. If there is no
40 hearing, or the commission affirms the closure, it will end automatically at the time specified in
41 the closure order (which is not to exceed a period of one year). See existing Section 6654.
42 Proposed Section 54035(a)(1) is phrased to be compatible with both possible endings.

43 **The Commission invites comment on whether that revision would cause any problems.**

1 **§ 54040. Scientific and educational permits**

2 54040. The commission may, subject to any regulations that it deems proper,
3 grant permits to any department of the United States Government or to any
4 scientific or any educational institution, to harvest kelp at any time for scientific or
5 experimental purposes without the payment of the kelp license or royalty imposed
6 by this title.

7 **Comment.** Section 54040 continues former Fish and Game Code Section 6657 without
8 substantive change.

9  **Note.** Existing Section refers to a “privilege tax imposed by this chapter.” There is no other
10 provision of the chapter that uses the term “privilege tax.” It seems likely that the term is meant to
11 refer to the “royalties” imposed by existing Section 6680 (proposed Section 54050). That would
12 be consistent with the use of the term “privilege tax” to refer to weight-based fees imposed on a
13 commercial fisherman when landing fish. See existing Section 8040(b). To avoid any confusion,
14 proposed Section 54040 would replace the term “privilege tax” with “royalty.”

15 **The Commission invites comment on whether that substitution would cause any**
16 **problems.**

17 Article 2. Kelp Harvest Royalties

18 **§ 54050. Royalty**

19 54050. (a) In addition to the license fee provided for in this chapter, every
20 person harvesting kelp or other aquatic plants shall pay a royalty, as the
21 commission may prescribe, of not less than five cents (\$0.05) per ton of wet kelp
22 or wet aquatic plants harvested.

23 (b) Any revenues derived from those royalties shall not be available for
24 expenditures until appropriated.

25 **Comment.** Section 54050 continues former Fish and Game Code Section 6680 without
26 substantive change.


27 **§ 54055. Weight records**

28 54055. (a) Every person engaged in harvesting kelp shall determine the weight
29 of all wet kelp, immediately after it is delivered to the licensee’s place of business
30 or elsewhere. The weight shall be entered in a book to be kept by the licensee. The
31 book shall be open at all times to the inspection of the department.

32 (b) The weight shall be determined by any method approved by the department,
33 including the displacement method.

34 (c) Every person engaged in harvesting kelp shall, on or before 10 days after
35 each month of the term of the license, deliver to the department a statement of the
36 weight of all wet kelp harvested during the preceding month.

37 **Comment.** Section 54055 restates former Fish and Game Code Section 6652 without
38 substantive change.

39  **Notes.** (1) Proposed Section 54055(a)-(b) would restate the first paragraph of existing
40 Section 6652 to improve its clarity, without changing its substantive effect. The restated
41 paragraph reads as follows:

“Every person engaged in harvesting kelp shall determine the weight by any method, including the displacement method, approved by the department of all wet kelp immediately after it is delivered to the licensee’s place of business or elsewhere, and the weight shall be entered in a book to be kept by the licensee. The book shall be open at all times to the inspection of the department.”

The Commission invites comment on whether that restatement would cause any substantive change in the meaning of the provision.

(2) The second paragraph of existing Section 6652 requires that a commercial kelp harvester “render a statement” each month, without specifying where the statement must be “rendered.” A Fish and Game Commission regulation addresses that point, requiring that a kelp landing record be “delivered to the department.” 14 Cal. Code Regs. § 165(b)(3)(G). In the interests of clarity, proposed Section 54055(c) would codify that element of the regulation, replacing “render” with “deliver to the department.”

The Commission invites comment on whether that revision would cause any problems.

Article 3. Kelp Bed Leases

§ 54075. Description and regulation of kelp beds

54075. The commission shall describe the kelp beds of the state and adopt regulations for the leasing of the beds.

Comment. Section 54075 continues the second sentence of former Fish and Game Code Section 6700 without substantive change.

§ 54080. Exclusive lease of kelp bed

54080. The commission may lease to any person the exclusive privilege to harvest kelp in any designated kelp bed, or part thereof, if the commission determines that the lease is in the public interest.

Comment. Section 54080 continues the first sentence of former Fish and Game Code Section 6700 without substantive change.

§ 54085. Application

54085. A person wishing to lease the exclusive privilege to harvest kelp shall submit a written application to the commission. The application shall include all of the following, and any other information that the commission may prescribe:

(a) The number of the kelp bed or beds to be leased.

(b) The designated number of square miles in each bed.

Comment. Section 54085 continues former Fish and Game Code Section 6701 without substantive change.

§ 54090. Deposit

54090. A deposit of not less than forty dollars (\$40) for each square mile, or fraction thereof, of the total area of the kelp bed or beds which are designated in the application shall be submitted with the application. The deposit shall be refunded to the person making the application unless a lease is executed.

Comment. Section 54090 continues former Fish and Game Code Section 6701.5 without substantive change.

1 **§ 54095. Commission action on application**

2 54095. (a) If the commission finds that the kelp beds included in the application
3 are available for lease and that the lease would be in the public interest, the
4 commission shall publish a notice that the area is being considered for leasing.

5 (b) The commission shall have legal notices published in a newspaper of general
6 circulation in each county where the kelp bed, or any part thereof, is located,
7 describing the area to be leased and the type of operation to be conducted. Except
8 as provided in this subdivision, the publication shall be made pursuant to Section
9 6066 of the Government Code.

10 (c) If the commission receives more than one application for the lease of a kelp
11 bed or beds, it shall advertise for bids on the area being considered for leasing.
12 The commission shall award the lease of that area to the highest qualified bidder.

13 **Comment.** Section 54095 continues former Fish and Game Code Section 6702 without
14 substantive change.

15 **§ 54100. Terms of lease**

16 54100. (a) The initial term of a lease for the exclusive privilege of harvesting
17 kelp shall not exceed 20 years.

18 (b) No lessee shall have an exclusive lease, excluding subleases, to an area in
19 excess of 25 square miles or 50 percent of the total area of the kelp resource as
20 shown on the maps of the resource prepared by the commission, whichever is
21 greater.

22 **Comment.** Section 54100 continues former Fish and Game Code Section 6703 without
23 substantive change.

24 **§ 54105. Renewal**

25 54105. (a) Each kelp bed lease entered into or renewed, on and after January 1,
26 1985, shall specify a period prior to expiration when renewal of the lease may be
27 requested by the lessee. If the commission determines that the lessee has complied
28 with the terms of the lease, the lessee shall have a prior right to renew the lease on
29 terms agreed upon between the commission and the lessee.

30 (b) If terms for a renewal of the lease are not agreed upon, or the commission
31 determines that the lessee has not complied with the terms of the lease, the
32 commission shall advertise for bids on the individual kelp beds comprising the
33 lease.

34 (c) If a request for renewal is not made during the specified period by the lessee,
35 the commission shall advertise for bids on the individual kelp beds comprising the
36 lease.

37 (d) The duration of the term of any renewal of a lease shall not exceed 20 years.

38 **Comment.** Section 54105 continues former Fish and Game Code Section 6704 without
39 substantive change.

40 **Note.** Given that the maximum term of a kelp bed lease is 20 years, the Commission invites
41 comment on whether the reference, in existing Section 6704, to a lease “entered into or renewed,

on and after January 1, 1985” is obsolete. **Could the quoted phrase be deleted without substantive effect?**

§ 54110. Renewal of leases in effect on specified dates

54110. (a) Notwithstanding Section 54105, with respect to any kelp bed lease in effect on January 1, 1983, the lessee shall have a prior right to renew the lease on terms agreed upon between the commission and the lessee.

(b) If the lessee does not renew the lease, or if terms are not agreed upon, the commission shall advertise for bids on the individual kelp beds comprising the lease.

(c) The term of any renewal of a lease shall not exceed 20 years.

(d) Any lease in effect on January 1, 1985, may be performed pursuant to its terms, notwithstanding this article, but any renewal of that lease is subject to this article.

Comment. Section 54110 continues former Fish and Game Code Section 6705 without substantive change.

Note. Existing Section 6705 provides special rules for kelp bed leases that were in effect in 1983 and 1985. Considering that kelp bed leases are limited to 20-year terms, it is not clear that any such leases continue to exist. On the other hand, if renewal is considered to be an *extension* of a lease, rather than *replacement* of a lease, it is possible that leases in effect in 1983 and 1985 still exist.

The Commission invites comment on whether Section 6705 is obsolete or continues to serve a purpose.

§ 54115. Renegotiated terms


54115. Notwithstanding Sections 54100 and 54105, at any time during the term of a lease, the commission and the lessee may negotiate and enter into a new lease on terms agreed upon between the two parties, if the commission determines that a new lease would be in the best interest of the state. The initial term of the new lease shall not exceed 20 years.

Comment. Section 54115 continues former Fish and Game Code Section 6706 without substantive change.

§ 54120. Royalty payment

54120. Each lease entered into, or renewed, on or after January 1, 1985, shall require, in addition to the license fee required by this chapter, a payment by the lessee or any sublessee of not less than the minimum royalty established under Article 2 (commencing with Section 54050), for all kelp harvested from the lease area, and shall provide for an annual advance payment of not less than forty dollars (\$40) per square mile per year for the kelp bed leased, to be credited against the amount payable by the lessee, or sublessee, as the case may be, for each ton of kelp harvested during the ensuing year. The lease shall, in addition, include provisions for forfeiture of the lease if the annual payment is not made in advance.

1 **Comment.** Section 54120 continues former Fish and Game Code Section 6707 without
2 substantive change.

3  **Note.** Given that the maximum term of a kelp bed lease is 20 years, the Commission invites
4 comment on whether the reference, in existing Section 6707, to a lease “entered into or renewed,
5 on and after January 1, 1985” is obsolete.

6 **Could the quoted phrase be deleted without substantive effect?**

7 **§ 54125. Assignment**

8 54125. (a) A lease may not be assigned, in whole or in part, by the lessee, either
9 voluntarily or by operation of law, and no subleases or other rights may be granted
10 thereunder by the lessee without the prior approval of the commission, subject to
11 the conditions that the commission prescribes.

12 (b) The lease shall be forfeited in the event of a violation of this section.

13 (c) Each lease shall contain a statement of the contents of this section.

14 **Comment.** Section 54125 continues former Fish and Game Code Section 6708 without
15 substantive change.

16 **§ 54130. DGS approval**

17 54130. A lease, or any renewal thereof, shall be submitted to, and approved by,
18 the Department of General Services.

19 **Comment.** Section 54130 continues former Fish and Game Code Section 6709 without
20 substantive change.

21 **§ 54135. Official record of lease**

22 54135. When an exclusive privilege to harvest kelp has been granted by lease by
23 the commission, the commission shall furnish a true copy thereof to the
24 department. The department shall file a notice for record in the recorder’s office of
25 the county in which the kelp bed or beds, or part thereof, are located, setting forth
26 the name of the person having the privilege, the description of the kelp bed or
27 beds, or part thereof, and the time for which the privilege has been granted. The
28 notice required to be filed for record under this section may be a copy of the
29 executed lease.

30 **Comment.** Section 54135 continues former Fish and Game Code Section 6710 without
31 substantive change.

32 **§ 54140. State Lands Commission**

33 54140. The department shall inform the State Lands Commission of all kelp bed
34 leases executed pursuant to this title, and shall furnish the State Lands
35 Commission with the information concerning these leases that it may require.

36 **Comment.** Section 54140 continues former Fish and Game Code Section 6711 without
37 substantive change.

Article 4. Closure of Kelp Beds

§ 54175. Notice of proposed closure

54175. If, at any time, the commission finds that the harvesting of kelp will tend to destroy or impair any kelp bed or beds, or parts thereof, or tend to impair or destroy the supply of any food for fish, the department shall serve on every person licensed to harvest kelp a written notice that the kelp bed or beds, or parts thereof, shall be closed to the harvesting of kelp for a period not to exceed one year.

Comment. Section 54175 continues former Fish and Game Code Section 6654 without substantive change.

§ 54180. Hearing

54180. (a) Within 10 days after the service of a notice pursuant to Section 54175, the person upon whom notice is served may demand a hearing upon the necessity for the closing of the kelp bed or beds, or parts thereof.

(b) Upon a demand for a hearing, the commission shall fix a time and place for the taking of evidence upon the necessity for the closing, which time shall be not less than 10 days nor more than 30 days from the date of the demand.

(c) The department shall serve written notice of the time and place of the hearing upon the person demanding the hearing, at least 10 days before the day set for the hearing.

(d) If no demand is made for a hearing within the time prescribed, the kelp bed or beds, or parts thereof, shall remain closed to the harvesting of kelp for the time specified in the order.

Comment. Section 54180 continues former Fish and Game Code Section 6655 without substantive change.

CHAPTER 3. NONCOMMERCIAL USE OF KELP

§ 54200. Commission regulation

54200. The commission may regulate the taking, collecting, harvesting, gathering, or possession of kelp for purposes other than profit.

Comment. Section 54200 continues former Fish and Game Code Section 6750 without substantive change.

§ 54205. Governance by other provisions

54205. The provisions of Chapter 1 (commencing with Section 54000) and Chapter 2 (commencing with Section 54025) of this chapter do not apply to the taking, collecting, harvesting, gathering, or possession of kelp under this article.

Comment. Section 54205 continues former Fish and Game Code Section 6751 without substantive change.

1 TITLE 2. AGAR-BEARING MARINE PLANTS

2 CHAPTER 1. GENERAL PROVISIONS

3 § 54300. Provisions not exclusive

4 54300. The provisions of this title are not intended to be exclusive. Other
5 provisions that may govern agar-bearing marine plants include, but are not limited
6 to, Section 54005.

7 **Comment.** Section 54300 is new.

8 § 54305. Application of title

9 54305. This title does not apply to aquatic plants grown on private land or on
10 state water bottoms leased pursuant to Part 1 (commencing with Section 23300) of
11 Division 7.

12 **Comment.** Section 54305 continues former Fish and Game Code Section 6651(c) without
13 substantive change.

14 CHAPTER 2. DRYING

15 § 54325. Permit requirement

16 54325. No person shall dry agar-bearing marine plants for profit unless the
17 person has a permit issued under this chapter.

18 **Comment.** Section 54325 continues former Fish and Game Code Section 6653.5(b) without
19 substantive change.

20 § 54330. Permit issuance

21 54330. The department may issue permits for the drying of agar-bearing marine
22 plants subject to the regulations the commission may prescribe to provide for
23 proper utilization of that resource.

24 **Comment.** Section 54330 continues former Fish and Game Code Section 6653.5(a) without
25 substantive change.

26

DISPOSITION OF FORMER LAW

The table below shows the relationship between each provision of the existing Fish and Game Code and the corresponding provision of the proposed law (if any).

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1	1(a)	64	85
2	200	67	620
3 1st sent	10(a)	68	645
3 2nd sent	25	70	660
4	30	73	35(f), (g)
5	40	75	680
6	45	79	80
7	50 (1st sent)	80	95
8	55	81	695
9	60	82	700
9.2	725	83	735
10	65	86	755
11	70	88	760
12	3500(b)	89	655
13	75	89.1	740, 790
13.5	205	89.5	800
14	215	90	not cont'd
15	220	90.1	not cont'd (see Note on proposed § 205)
16	210	90.5	265
17	225	90.7	340
18	230	91	350
19	635	93	365
22	245	94	410
24	260	96	525
27	270	96.5	540
29	275	97	600
30 1st cl	305	97.5	605
30 2nd cl	310	98	610
32	315	98.2	615
33	320	98.5	625, 745
35	795	99	670
35 1st cl	325	99.5	750
37	335	101	900
39	345	101.5	905
41	355	102	910
43	360	103	915
45	380	104	935
46	475	105	925
48	480	106	930
51	485	107	940
54	505	108	1200
54.5	520	110	920
55	550	200(a), (b)(1), (b)(2) 1st sent, (c)	1000
56	565	200(b)(2) 2nd sent	720
57	580	200(b)(2) 3rd sent	705
60	585	201	1005
61	590	203	1010
62	595	203.1	1020

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
205	1015	400	4800
219	1025	401	4805
250	1100	450	34500
255	1105	451	34530(e)
260	1110	452	34505
265	1115	453	34510(a)
270	1120	454	34510(b)
275	1125	455	34510(c)
301	1205	456 1st sent	34515(a)
302	33400(a)	456 2nd sent	not cont'd
303	33400(b)	456 3rd sent	34515(b)
306	8700	457	34520
307	8705	458	34525
308	8720	459	34525
308.5	35820	460	34530(a)-(d)
309(a)	1300	500(a)-(c), (d) 1st sent	9360
309(b)	1305	500(d) 2nd sent	9310(b)
310	41000	700	1500
312	9150	701	1515
313	44350	701.3	1520
314	8710(a)	701.5	1915(a), (b)
315	8710(b)	702	1505
315.3	8715	702.1	4315
316	39805	703(a)	1510
316.5	41010	703.3	2410
317	10310	703.5	2400
325	10500(a)(1)-(3)	704	1525
326	10505(a)	706	1530
327	10510	707	1605(a)
328 1st sent	10505(b)	70932965(a), 34245(a), 34870(a), 35820(a)	
328 2nd sent	10515	710	3450
329	10500(a)(4)	710.5	3455
330	10500(b)	710.7	3460
331(a)	33000	711	3465
331(b) 1st-3rd sent	32955	711.2(a)	640
331(b) 4th sent	32960(b)	711.2(b)	1605(b), 1915(c), 9100(i)
331(c), (d)	32950	712	3470
332(a)	34950	713	3755
332(b)	34850	714	9100(a)-(h)
332(c)	34860	715	1910
332(d), (e)	34855	716	5200
355 1st, 2nd para	29210	716.1	5205
355 3rd para	29220	716.2	5210
356 1st para	29200	716.3 intro.	5300
356 2nd para	29215	716.3(a)	5305
357	29225	716.3(b)	5310
375	5100	716.3(c)	5315
390	5000	716.3(d)	5320
391	5050	716.3(e)	5325
392	5005	716.3(f)	5330
393	5010	716.3(g)	5335
395	30100	716.3(h)	5340
396	30105(a), (b)	716.3(i)	5345
398	30105(c)	716.3(j)	5350
399	1250	716.3(k)	5355

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
716.3(l).....	5360	1017	1740
716.3(m).....	5365	1019	2100
716.3(n).....	5370	1020	2405
716.3(o).....	5375	1021	49850
716.3(p).....	5380	1050(a)	2905
716.3(q).....	5385	1050(b)	2805
716.3(r)	5390	1050(c)	2910
716.3(s)	5395	1050(d)	3000
716.3(t).....	5400	1050(e)	3750
716.4	5450	1050(f)	3005
716.5	5500	1050.1	2815
716.6	5550	1050.3	2925
716.7	5600	1050.5	3010
716.8	5650	1050.6	2915
716.9	5700	1050.8	3665
717	5750	1051	2810
717.1	5800	1052	3050
717.2	5805	1052.5	2820
850	1600	1053.1(a)	2930
851	4100	1053.1(b)	not cont'd
853	4110	1053.5	10205
854	4115	1054(a)	2300
855	4305	1054(b)	2920
856	4105	1054(c)	2300, 2920
856.5	4320	1054.2	8300(a)
857	1610	1054.5	2900
858(a).....	1615	1054.8	2940
858(b).....	4120	1055.1(a), (b)	3200
859	3660	1055.1(c) 1st sent	3250(a)
860	3670	1055.1(c) 2nd sent	3250(c)
875	4200	1055.1(c) 3rd, 4th sent.....	3250(b)
876	4210	1055.1(d)-(f)	3350
877	4205	1055.1(g)	3205
878	4215	1055.1(h)	not cont'd
879	4220	1055.3	3210
880	4225	1055.6(a)	3255(a)
881	4230	1055.6(b)	3255(b)
882	4235	1055.6(c)	3355
1000	1745	1055.6(d)	3255(c)
1000.6	40955	1055.6(e)	not cont'd
1001	1700	1056	3370
1002	9200	1057	3365
1002.5	9205	1058	3375
1003	9210	1059	3360(a), (b)
1004	1705	1061	2935
1005	1750	1065	3260
1005.5	1755	1068	50655
1006	1715	1069	23200
1007	1710	1110	15200
1008	1720	1120	25100
1009	2105	1121	25105
1011	2200	1122	25110
1012	2205	1122.5	25130
1013	2210	1123	25405
1015	1725	1123.5	25855

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
1124	11505	1908	53820
1125	25420	1909	53830
1126	25115	1910, 1st sent.	53835
1150	25120	1910, 2d sent.	53840
1170	25200	1911	53845
1171	25205	1912	53855(a)
1172	25210	1913(a)	53855(b)
1173	25215	1913(b)	53855(c)
1174	25220	1913(c)	53855(d)
1175	25225	1925, 1st sent.	53900
1200	25300	1925, 2d sent.	53910
1201	25305	1926	53905
1202	25310	2000	8000
1203	25315	2000.5	8005
1204	25320	2001	8015
1205	25325	2002	8010
1206	25330	2003	8115
1210	25135	2004	8120
1225	3650	2005	8125
1226(a)	3655	2006	9715
1226(b)	1900	2007	9560
1227	1905	2009(a), (c)-(f)	8130(a), (b), (d), (e)
1502	1730	2009(b)	8130(c)
1503	34535	2010	9555
1575	10700	2011	9735
1725	11700	2011.5	9725
1726	11705	2012	8305
1726.1	11710	2013	90
1726.4	11715	2014	8450
1726.5	11720	2015	28600
1727	11725	2016	9580
1728	11730	2018	8135
1729	11735	2019	9730
1730	11740	2020	4405
1740	38900	2021	42610(a)-(d)
1741	38905	2021.5(a)	42610(e), (f)
1742	38910	2021.5(b)	42615
1743	38915	2022(a)	28650
1745(a)	2000	2022(b), (c)	28655
1745(b)(1)	2005	2022(d)	28660
1745(b)(2)	2010	2022(e)	28665
1745(c), (d)	2015	2022(f), (i)	28670
1745(e)-(g)	2020	2022(g)	28675
1745(h)	2025	2022(h)	28680
1745(i)	2035	2022(j)	28685
1745(j)	2030	2116	26500
1745.1	2040	2116.5	26510
1900	53800	2117	26505
1901, except 2d sent.	53805	2118(a)	26700
1901, 2d sent.	557	2118(b)	26705
1904, 1st sent.	53810	2118(c)	26710
1904, 2d sent.	53815	2118(d), (e), (j)	26715
1905	53850(a)	2118(f)	26720
1906	53850(b)	2118(g), (h)	26725
1907	53825	2118(i)	26730

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
2118(k).....	26735	2250	35615
2118.2	26865(a)-(c)	2270	28100
2118.3	26865(e)	2270.5	28105
2118.4	26865(d)	2271	28110
2118.5	26605	2272	28115
2119	26615	2300(a), (b)	28250
2120	26600	2300(c)	28255
2121	26860	2301(a)(1)	49950
2122	26610	2301(a)(2)(A)-(D)(i), (c)(2)	49960
2123	26620	2301(a)(2)(D)(ii)-(iv)	49965
2124	26850	2301(b)	49970
2125(a) (1st sent)	27005(a)	2301(c)(1)	49975
2125(a) (2nd sent)	27000	2301(d)	49980
2125(b)	27005(b)	2301(e)	49955
2125(c)	27010	2301(f)	49995
2125(d)	27015	2301(g)	49985
2126	26855	2301(h)	49990
2127	27020	2301(i)	50000
2128	26870	2302(a), (b)	50105
2150(a)	27200	2302(c)	50110
2150(b)	27205	2302(d)	50115
2150(c)-(f)	27210	2302(e)	50120
2150.1	27215(b)	2302(f) 1st, 2nd sent	50130
2150.2	27215(a)	2302(f) 3rd sent	50125
2150.3	27220	2302(g)	50100
2150.4	27225	2345	28400
2150.5	27330	2346	28405(a)
2151	27235	2347	28405(b)
2152	27240	2348	28410
2153	27245	2349	28415
2155	26750	2350	29375, 34120
2156	27255	2352	28420
2157(a)	27260	2353	28425
2157(b), (d)	27265	2354	40705
2157(c)	27270	2355	34125
2185(a)	27405	2356	43850
2185(b)	27400	2358	43855
2186(a)	27410	2359	38865(a)
2186(b)	27400	2360	38850, 38860
2187(a)	27415	2361	41050
2187(b)	27400	2362	38705, 38875(a), 38875(b), 44650
2189(a)	27500	2363	38865(b), 42455, 43200
2189(b), (c)	27505	2364	46550
2189(d)-(f)	27510	2365	49315
2190	27700	2368	46255
2192	27710	2369	46260
2193(a)	27275	2371	45750
2193(b), (c)	27280	2400	28500
2195	27705	2401	28505
2200	27600	2535	8800
2201	27605	2536	8805
2202	27610	2537	8810
2203	27615	2538	8900
		2539	8815
2225	28000	2540(a), (b), (d), and (e)	8905

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
2540(c)	8910	3005(c)	9565(b)
2541	8915	3005(d)	9565(c)
2542	8820	3005.5	9740
2543	8825	3006	33225, 34115, 34810
2544	8920	3007	9500(a)
2545	8925	3008	9720
2546	9000	3009	10100
2575	37455(b)	3010	30910(a)
2576	37455(a)	3011	33200
2580	9300	3012	9585
2581	9310(a)	3031	10210
2582	9305	3031.2	10225
2583(a) 1st sent	9320	3031.5	10215
2583(a) 2nd, 3rd sent	9325	3032(a)(1)	31500
2583(b)	9310(c)	3032(a)(2)-(d)	31505
2584(a)	9315	3033	10300
2584(b)-(h)	9330	3037	10220
2585	9335	3038	10305
2586(a)	4300	3039	28750
2586(b)	4300, 9310(b)	3040	10230
2587(a)	9340	3049	10400
2587(b)	9345	3050	10200
2588	9350	3051	10405
2589	9355	3052	10410
2760	11900	3053	10415
2761	11905	3054	10420
2762	11910	3060	10355
2762.2	11915	3061	10350
2762.5	11920	3062	10360
2762.6	11925	3063	10365
2763	11930	3080(a)	10800
2764	11935	3080(b)	10805
2765	11940	3080(c)	10810
3000	9590	3080(d)	10815
3001	9710	3080(e)	10820
3002	9550	3086	10825
3003	9575	3087	10830
3003.1(a) 1st sent, (b), (c)	11110(a)	3200	26000
3003.1(a) 2nd-3rd sent	250	3201	26005
3003.1(d)	11100	3202	26010
3003.2	8140(a)	3203	26015
3003.5	9570	3204 1st para	26020
3004(a)	9700	3204 2nd para	26025
3004(b)	9705	3205	26030
3004.5(a)	10000	3206	26035
3004.5(b)	10005(a)	3207	26040
3004.5(c)	10010	3208	26045
3004.5(d)	10015	3209	26050
3004.5(e)	10020	3212	26055
3004.5(f)	10030	3213	26060
3004.5(g)	10025(a)	3214	26065
3004.5(h)	10025(b)	3216	26070
3004.5(i)	10005(b)	3217	26075
3004.5(j)	10005(c)	3218	26080
3005(a)	9565(a)	3219	26085

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
3240.5(a)	10600	3516 2nd para	29650
3240.5(b)	10605	3660	30910(b)
3240.5(c), (d)	10610	3680	31010
3241	10615	3681	30510
3242	10620	3682.1(a)	29500
3243.5	10625	3682.1(b)	29505
3245	10630	3682.1(c)	not cont'd
3246	10635	3682.2	29510
3270(a)	29365	3683	775
3270(b)	not cont'd	3683(a)(11)	30900
3300 1st para, 1st sent	26205	3683(a)(12)	31100
3300 1st para, 2nd sent	26210(a)	3683(b)(4)	31000
3300 2nd para	26200	3684(a)	29515(a)
3301 1st sent	26210(b)	3684(b)	29515(b)
3301 2nd, 3rd sent	26215	3684(c) 1st sent	29515(d)
3302	26220	3684(c) 2nd sent	29520(a)
3303 1st, 2nd sent	26225	3684(c) 3rd sent	29525
3303 3rd sent	26230	3684(c) 4th, 5th sent	29520(b)
3305	26235	3684(d)	29530(a)
3306 1st, 2nd para	26240	3684(e) 1st sent	29540
3306 3rd para	26245	3684(e) 2nd sent	29515(e)
3307 1st para, 1st sent	26250(b)	3684(f)	29545
3307 1st para, 2nd sent	26250(a)	3684(g)	29515(c)
3307 2nd para	26255	3686 1st sent	29520(c)
3308	26265	3686 2nd sent	29530(b), 29535
3309	26260	3700.1(a)	30505(a)
3310	26270	3700.1(b)	30515
3311	26275	3700.1(c)	not cont'd
3450	4850	3700.2(a)-(f)	30520
3451	4855	3700.2(g)	30525(a)
3452	4860	3701 1st sent	30530
3453	4865	3701 2nd sent	30535(a)
3500(a)	665	3702 1st sent	30540
3500(a)(10)	30900	3702 2nd sent	30555
3500(a)(11)	31100	3702 3rd sent	30550
3500(b)	545	3702.1	30565
3500(b)(1)	30500	3702.5 1st para	30525(b)
3500(b)(6)	31000	3702.5 2nd para	not cont'd
3500(c)	450	3703	30560(a)
3501	29355	3704 1st para, 1st-2nd sent	30535(b)
3502	29350	3704 1st para, 3rd sent	30535(c)
3503	28905(a)	3704 1st para, 4th sent	30545
3503.5	30105(a), 30105(b), 30110(a)	3704 2nd para	not cont'd
3504	28910	3704.5 1st para, 1st sent	30570
3505	30300, 30700, 30750, 30800, 30850	3704.5 1st para, 2nd sent	30555
3508	29360	3704.5 1st para, 3rd sent	30550
3511(a)(1) 1st, 2nd sent	30200(a), (b)	3704.5 2nd para	not cont'd
3511(a)(1) 3rd-6th sent, (a)(2)	30205	3705	30560(b)
3511(a)(3)	30210	3800(a) 1st sent	570
3511(b)	420	3800(a) 2nd sent	29850(a)
3511(b)(5)	30350	3801	31050
3513	29855(a)	3801.5	29860
3514	370	3801.6(a)	30000
3515	29705	3801.6(b)(1)	30005
3516 1st para	29700	3801.6(b)(2) 1st sent	30015

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
3801.6(b)(2) 2nd-4th sent	30010(a)	4004(b)	11105
3801.6(c)	30010(b)	4004(c)	11020(a), (b)
3802	30115	4004(d)	11000
3803	28915	4004(e)	11155
3806	29205	4004(f)	11005
3850	30360	4004(g)	11010
3851	30365	4005(a) 1st sent	11200(a), (b)(1)
3852	30370	4005(a) 2nd sent	650
3853	30375	4005(b)	11210
3854	30380	4005(c)	11200(b)(6)
3855	30385	4005(d)	11205
3856	30390	4005(e)	11200(b)(2)-(5)
3857	30395	4005(f)	37460
3860	29050	4006(a)	11215(a)
3861	29055	4006(b)	11230
3862	29060	4006(c)	11215(b)
3863	29065	4007	11220
3950(a)	460(a)(1)-(4), 460(a)(6)-(9), 32900, 33100, 34100, 34800, 35300(a), 35700, 36000, 37100, 37450	4008	11225
3950(b)	460(a)(5)	4009	11015
3950.1	460(b), (c)	4009.5	11235
3950.1(a)	35300(b)	4010	26400
3950.1(b)	35310	4011	31700
3951	34960	4012	35210
3952	34955	4030	11300
3953(a)	31900	4031	11305
3953(b) 1st sent	32960(a), 34865, 35825(a), 37220	4032	11315(a), (b)
3953(b) 2nd sent	32965(b), 33305, 34240, 34245(b), 34870(b), 35820(b)	4033	11315(c)
3953(c)	31905	4034	11310
3953(d)	31910	4035	11320
3953(e) 1st sent	31915	4036	11350
3953(e) 2nd sent	31920	4037	11325(a)
3953(f)	31925	4038	11325(b)
3953(g)	31930	4040	11330
3960(a)	31500	4041	11335
3960(b)	31510(a)	4042	11340
3960(c)(1), (2), (4)	31550	4043	11355
3960(c)(3)	31510(b)	4150	35700
3960.2	33515	4150 1st sent	575(a)
3960.2(a)	31500, 33755	4150 2nd sent	32300
3960.2(b), (d), (e)	33905	4151	575(b)
3960.4	33600, 33755	4152	32305, 35215, 35610, 35710, 36010
3960.4(a)	31500	4153 1st para	32310(a)
3960.4(b)-(d)	33950	4153 2nd para	31600
3960.6	33505, 33755	4154	32310(b)
3960.6(a)	31500	4155(a)	33805
3960.6(b)	33900	4155(b), (c)	33810
3961	31555	4155(d)	33800
4000	435, 33700, 35200, 35600	4155(e)	33815
4002	32150(a)	4155(f)	33820
4003	32150(b)	4180	32155
4004(a)	11150	4180.1 1st para	31605(a)
		4180.1 2nd para	31605(b)
		4181(a)	31110, 33520(a)-(e) and (g), 33710, 35000(a)-(d) and (g), 36015, 37150, 37360(a)-(d) and (f)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
4181(b).....	33520(f)	4751	33300
4181(c).....	37355(f), 37360(e)	4752	33310
4181(d).....	35000(e), (f)	4753	33210
4181.1(a).....	33510(a)	4754	33315
4181.1(b).....	37355(a)-(d)	4755	33215
4181.1(c).....	33510(b), 37355(e)	4757	33220
4181.1(d).....	33510(c)	4758	33455
4181.1(e).....	33510(d)	4759 1st sent.....	33450(a)
4181.2	37350	4759 2nd, 3rd sent	33450(b)
4181.5	34600	4760	33110
4185	33650	4763	33500
4186	35705	4800(a)-(c).....	35350
4188	31115, 34605, 37365	4800(d)	35310
4190	31610	4801	35400
4301(a) 1st sent.....	34400(b), (c)	4801.5.....	35440
4301(a) 2nd-4th sent	34405(b)-(d)	4802	35405
4301(b).....	34400(a), 34405(a)	4803	35410
4302	34110	4804	35415
4303	34410	4805	35420
4304	31800, 34415	4806	35425
4304 1st sent	29370	4807	35430
4330	34200(a)	4808	35315
4331	34220	4809	35435
4332(a)-(d)	33225	4810	35500
4332(e)	not cont'd	4900	35810
4333	34230	4901	35815
4334	34215	4902(a), (b)	35900
4336	34205	4902(c)	35910
4340	34235	4902(d)	35905(a), (b)
4341	34210	4902(e)	35905(c)
4370	34350	4903	35915
4371	34355	4903 3rd, 4th sent	35825(b)
4500	32500(a)-(c)	5000	53305
4500(c)	530	5001	53315
4500(c)	37000	5002	53310
4501	35755	5050(a)	52200(a)-(d), (g); 53000(a)-(d), (g)
4502.5	37050	5050(b)(1), (2)	440
4600	34055(a)-(c)	5050(b)(3)-(5).....	415
4650	37105	5060	53100
4651	37300	5061	53105
4652	37150	5062	53200
4653	37200	5500	8145
4654	37205, 37215	5501	11540
4655	37210	5503	11525
4656	not cont'd	5505	11530, 45250, 45400, 51905
4657	37155	5507	11510
4700(a)(1) 1st, 2nd sent	32700(a), (b)	5508	11515
4700(a)(1) 3rd-6th sent, (a)(2)	32705	5509	11520
4700(a)(3)	32710	5510	13710
4700(b).....	430	5511	24905
4700(b)(1), (b)(7).....	37450	5514	41005, 43950
4700(b)(2)	35800	5515(a)	38200(a)-(d), (g)
4700(b)(6)	37000	5515(b)	425
4700(b)(8)	35750	5516	11535
4750	33205(a)	5517	42605

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
5520	46000	6594	25715(a)
5521	45800	6595	25725
5521.5	45805	6596.1(a) 1st, 3rd sent	12910(a), (b)
5521.6	45810	6596.1(a) 2nd sent, (f)	13255(a)
5522(a), (b)	46005	6596.1(b)	21935
5522(c)	46010	6596.1(c)	38875(c)
5522(d)	46015	6596.1(d)	14620
5522(e)	46020	6596.1(e)	not cont'd
5523	11500	6596.1(f)	14620
5669	45500(a)	6596.1(g)	13255(b), 21935(c)
5670	45505	6597	25730
5671	45500(a)	6597.5	25735
5672 1st para	45510(a)	6598	25740
5672 2nd para	45505	6650	54025
5673	45510(b)	6651(a)-(b)	54030
5674	45515	6651(c)	54010, 54305
5675	45500(b)	6652	54055
5700	45450	6653	54005
5701	45455	6653.5(a)	54330
5701.5	45460	6653.5(b)	54325
5702	45465	6654	54175
6300	37950, 52000, 53600	6655	54180
6301	37955, 52005, 53605	6656	54035
6302	37960, 52010, 53610	6657	54040
6303	37965, 52015, 53615	6680	54050
6304	37970, 52020, 53620	6700, 1st sent.	54080
6305	37975, 52025, 53625	6700, 2d sent.	54075
6306	37980, 52030, 53630	6701	54085
6400	25415	6701.5	54090
6400.5	38870	6702	54095
6401	25410	6703	54100
6402	25850	6704	54105
6403	13255(c), 25400, 39150	6705	54110
6420	25600	6706	54115
6421	25605	6707	54120
6422	25610	6708	54125
6423	25615	6709	54130
6424	25620(a)	6710	54135
6425(a)	not cont'd	6711	54140
6425(b)	25620(b)	6750	54200
6440	39205	6751	542056850
6450	39210	6851	52450
6451	39215	6852	52460
6452	39220	6854	52455
6453	39235	6855	52465
6454	39230	6880	52500
6455	39225	6881 1st sent.	52505
6456	39200	6881 2nd sent.	52510
6457	39240	6882	52505
6460	39245	6883	52515
6590	25700	6884	52505
6591	25705	6885	52520
6592	25710	6895	52300
6593 1st, 3rd sent	25720	6896	52305
6593 2nd sent	25715(b)	6900	11800

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
6901	11810	7090(b)(2) 2nd sent (b)(2)(A)-(E)	12610
6902	11815	7090(c)	12615
6903	11820	7090(d)	12620
6903.5	25125	7090(e)	12625
6910	11805	7090(f)	12630
6911	11805	7090(g)	12635
6912	11805	7090(h)	12640
6920(a)	11825(a)	7100	12805
6920(b)	11830	7110	13800
6921	11825(b)	7115	13805
6922	11845	7120	13500
6923	11840	7121 1st para	13600
6924	11835	7121 2nd para	13605
6930	11850	7123	40710
6950	41100	7145(a)	12900, 13000
6952	41105	7145(b)	13010
6953	41110	7147	21930
6954	41115	7149.05(a)	12850, 13100(a)
6955	41120	7149.05(b)	13400
6956	41125	7149.05(c)	not cont'd
7050	12100	7149.05(d)	13100(b)
7051	12105	7149.05(e)	13100(c)
7055	12150	7149.2	13105
7056	12155	7149.3	53250
7058	12160	7149.45(a)	12905(a), (b)
7059	12165	7149.45(b)	13250
7060	12200	7149.5	13110
7062	12205	7149.7	13020
7065	12250	7149.8	45700(a)-(c)
7066	12255	7149.9(a) 1st, 2nd sent	45955(a)
7070	12300	7149.9(a)(1) 1st sent	45960
7071(a)	12305	7149.9(a)(1) 2nd sent	45950(b), (c)
7071(b), (c)	12310	7149.9(a)(2), (a)(3)	45960
7072(a)-(c)	12315	7149.9(b)-(d)	45955(b)-(d)
7072(d)	12320	7150	13150
7073	12325	7151(a)-(c)	13200
7074	12330	7151(d)	13205
7075	12400	7151(e)	13210
7076	12405	7151(f), (g)	13215
7077	12410	7153	13005
7078(a)-(c)	12415	7153(a)	13015
7078(d)	12420	7180.1(a)	12950, 12955
7078(e), (f)	12425	7180.1(b)	12955
7080	12500	7180.1(c) 1st sent	12955
7081	12510	7180.1(c) 2nd sent	13260
7082	12515	7181.1(a)	12960
7083	12520	7181.1(b)	not cont'd
7084	12525	7182.1(a)	13405
7085	12530	7182.1(b)	not cont'd
7086	12535	7183.1(a), (b)	13355
7087(a)	12505	7183.1(c)	not cont'd
7087(b)	12540(a)	7184.1(a), (b)	13360
7088	12540(b)	7184.1(c)	not cont'd
7090(a)	12600	7185	12965, 13350(a), 13405(b)
7090(b)(1), (b)(2) 1st sent	12605	7186.1(a)	13365

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
7186.1(b).....	13350(b)	7850(a)	14500(a)
7186.1(c).....	not cont'd	7850(b)	14500(b)
7230	13700	7850(c)	14615
7232	13705	7850(c) 1st sent	14500(c)
7256	49310	7850(d)	14500(d)(1)
7260	43805	7850.5	14500(d)(2)
7261	555	7851	14550(b)
7290	46250	7852(a), (b)	14550(a)
7332	46300	7852(a)-(d)	14600
7350	38855	7852(e)	14550(c)
7361	13900	7852.1	14610, 14770
7362	13910	7852.2	14605
7363	13905	7852.25	14555
7364	13915	7852.27	14505, 20225
7370	43150(a), (b)	7852.4	14860
7380	44000	7853	14665(a)
7381	44005	7854	14665(b)
7382	44010	7855	14655
7400	46050	7856(a)-(d)	14870 (a)-(g)
7600	14200(a), 14200(b), 37805, 45005	7856(e)	14870(h)
7601	785	7856(f) 1st-3rd sent	14875
7630	22900	7856(f) 4th sent	14880
7650	22300	7857(a), (c)-(k), (m)	14560
7652(a)-(c)	22405	7857(b)	14650
7652(d).....	22315	7857(e)	14865
7652.1	22400(a)-(d)	7857(k)	14760
7652.2	22450(a)-(d)	7857(l)	14855
7652.3(a).....	22410, 22455	7857(m)	14850
7652.3(b).....	22400(e), 22450(e)	7858	14565
7653	22415	7860	41355
7654	22305	7861	41360(a)-(d)
7655	22310	7861.1	41360(e)
7660	42050(b)	7861.2	41365
7662	42050(a)	7861.3	41350
7690	not cont'd	7861.4	41375
7700(a)-(c)	21600	7861.5	41370
7700(d).....	730	7862	41380
7701	21610	7862.5	41385
7702	21615	7863	41390
7702.1	21810	7880	14785
7703	21620	7881(a)	14755, 14780
7704(a)	14310	7881(b) 1st sent	14765(a)
7704(b).....	21800	7881(b) 2nd sent	14775
7704(c)	42750	7881(c) 1st sent	14765(a)
7705	21750	7881(c) 2nd sent	14775
7706	21850	7881(d)	14790
7707	21855	7881(e)	14750
7708	21605	7881(f)	14765(c)
7709	23150	7881(g)	14765(d)
7710(a)-(c)	22800(a)-(e)	7891	15200
7710 last para	22800(f), 22805(d)	7892 1st sent	15050
7710.1	22810	7892 2nd sent	15055
7710.5	22805(a)-(c)	7892 3rd sent	15060
7712	22815	7920 1st sent	295, 300
7850	280	7920 1st, 3rd para	21905

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
7920 2nd para	21900	8042 2nd sent	20955(b)
7921 1st sent	21915	8043(a) 1st sent	21000
7921 2nd sent	21910	8043(a) 2nd sent	21005(a)
7923	21920(a)	8043(b)	21020
7924	21925	8043(c) 1st sent	21025(b)
7925	42100	8043(c) 2nd, 3rd sent	21025(c)
8010	22210	8043(c) 4th sent	21155
8022	22205	8043.1(a)	21000
8025(a)	21400, 22215	8043.1(b)	20905
8025(b)	not cont'd	8043.1(c) 1st sent	21005(b)
8026	22200(a), (b)	8043.1(c) 2nd sent	21005(c)
8030	20200	8043.1(d)	not cont'd
8031(a)(1) 1st, 2nd sent	20400(a)	8043.2(a)	21010
8031(a)(1) 3rd sent	20400(b)	8043.2(b)	21450
8031(a)(2), (3)	not cont'd	8043.2(c)	21455
8031(a)(4)	290	8045	21020, 21225
8031(b)	not cont'd	8046(a) 1st sent	21150
8032(a)	20205(a), 20230(b)	8046(a) 2nd, 3rd, 4th sent	21100
8032(b)	20205(b)	8046(b)	21015
8032(c)	20230(b)	8046(c)	21110
8032.5(a), (b), (d)-(i)	20210	8046.1	21115, 38365
8032.5(c)	20235	8047(a)(1) 1st sent	21005(c)
8033	395	8047(a)(1) 2nd sent	21150
8033(a)	20450	8047(a)(1) 3rd sent	21105(a)
8033(b)	20455(a)	8047(a)(1) 4th sent	21110
8033(c)	20460	8047(a)(2) 1st sent	21210(b)
8033.1(a)	515, 20600	8047(a)(2) 2nd, 3rd sent	21000
8033.1(b)	20610	8047(a)(2) 4th sent	21215
8033.2	20605(a)	8047(b) 1st sent	21000
8033.5(a)	400	8047(b) 2nd sent	20950
8033.5(a) 1st sent	20500	8047(b) 3rd sent	21025(a)
8033.5(a) 2nd sent	20505(a)	8047(b) 4th sent	not cont'd
8033.5(b)	not cont'd	8047(b) 5th sent	21105(a)
8034	390	8047(b) 6th sent	21105(b)
8034(a) 1st sent	20400(a)	8047(b) 7th sent	21110
8034(a) 2nd sent	20405(a)	8047(c)(1)	21210(a), 21215
8034(b)	not cont'd	8047(c)(2) 1st sent	21235
8035	405	8047(c)(2) 2nd sent	21230(a)
8035(a)	20550(a)	8047(c)(2) 3rd sent	21230(b)
8035(b)	20555(a)	8047(c)(3)	21205
8035(c)	20550(b)	8047(c)(4)	20450
8036(a)	385	8047(c)(5)	21200
8036(a) 1st sent	20350	8047(d)	21225
8036(a) 2nd sent	20355(a)	8047(e) 1st sent	21220
8036(b)	not cont'd	8047(e) 2nd, 3rd sent	21240
8037(a) 1st sent	20300	8047(e) 4th sent	21245
8037(a) 2nd sent	20220	8050	21300
8037(b)	not cont'd	8051	20955(a)
8038	20215	8051.4(a)	46150
8039	20230(c), 20355(b), 20405(b), 20455(b), 20505(b), 20555(b), 20605(b)	8051.4(b)	not cont'd
8040(a)	280	8052	21360
8040(b)	20900	8053	21350
8041	20950	8055	42105
8042 1st sent	20955(a)	8056	21355
		8057	21365(a)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
8058	21365(b)	8230	41650
8059	21365(c)	8231	41305
8060	21365(d)	8232	41665
8061	21365(e)	8232.5	41670
8062	21365(f)	8233 1st sent	41715
8063	21365(g)	8233 2nd sent	41795
8064	21370	8233.3	41730
8065	21375(a)	8233.4	41760
8066	21375(b)	8233.5	41735
8067	21375(c)	8233.8	41710
8068	21375(d)	8233.9	41680
8069	21375(e)	8234(a)	41675
8070	21375(f)	8234(b)	41800
8075	21650	8235	41725
8076	21805	8236	41720
8077	21655	8237	41735
8078	21660	8238	41745(a)
8079	21665	8238.1	41745(b)
8079.1	21670	8239	41740(a)-(i)
8080	21675	8239.1	41755(a)-(c)
8100	495	8239.2	41660(b)
8101	22500	8239.6	41765
8102	22505	8239.9	41750
8103	22510	8240	41755(d), (e)
8104	22515	8241	41740(j)
8110	22705	8242	41690
8111	22700	8243	41685
8112	22710	8244	41695
8113	22715	8245	41700
8114	22720	8245.5	41705
8120	41600	8246(a)	41785(a)
8121	41605(a)-(c)	8246(b)	41785(b)
8122	41605(d)	8246(c)	41785(c)
8123	41610	8246(d)	41785(e)
8125 1st, 2nd sent	22905	8246.2(a)	41790
8125 3rd sent	22915	8246.2(b)	41785(d)
8126	22910	8246.4	41770
8140	14210	8246.6	41775
8150.5	42265	8246.7	41780
8150.7 1st sent	42255	8246.8	41660(a)
8150.7 2nd sent	42260	8247 1st sent	41900
8154	42355	8247 2nd sent	41940
8180	38555(a)	8247 3rd sent	41930
8181	38555(b)	8247.1	41915
8182	38555(c)	8247.2 1st sent	41925
8183	38560	8247.2 2nd, 3rd sent	41935
8190	38550	8247.4	41945
8210.2	41450	8247.5(a)	41905
8213	41460	8247.5(b)	41920
8214	41465	8247.6	41955
8215	41470	8247.7	41910
8217	41455	8247.8	41950
8218	41475	8248	41655
8219	41480	8250	710
8226	42110	8250.5(a)	49700

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
8250.5(b).....	49715	8280.1(b)	48100
8250.5(c).....	49750	8280.1(b)(1), (2)	48105
8251	49600	8280.1(b)(3).....	48110
8252	49605	8280.1(b)(4)(A)	48115
8253	49755	8280.1(b)(4)(B)	48120
8254	49500(a)-(e)	8280.1(b)(4)(C)	48125
8254.7 1st-6th sent	49515	8280.1(b)(5).....	48130
8254.7 7th sent	49615	8280.1(b)(6).....	48135
8257	49505	8280.1(c)	48145
8258	49710(a)	8280.1(d)	48100
8259	49510	8280.1(e)	not cont'd
8275	46855	8280.1(f)	48140
8276(a), (b)	47300	8280.1(g)(1).....	47930
8276(c)	47060	8280.1(g)(2).....	47935
8276.2(a).....	47350	8280.1(h)	47945, 48150
8276.2(b)(1)	47355(a)	8280.2(a)-(d)	47925
8276.2(b)(2)(A)	47370	8280.2(e) 1st sent	47920
8276.2(b)(2)(B).....	47360	8280.2(e) 2nd-4th sent	47915
8276.2(c) 1st, 3rd-6th sent	47365	8280.2(f)	47945
8276.2(c) 2nd sent	47355(b)	8280.2(f)	47945
8276.2(d).....	47375	8280.3(a)	48300
8276.3(a), (b)	47150	8280.3(b)	48310
8276.3(c).....	47160	8280.3(c)	48315
8276.4(a) 1st sent	47800	8280.3(d)	48320
8276.4(a) 2nd sent, (a)(1)-(7)	47805	8280.3(e)	48325
8276.4(b).....	47810	8280.3(f)	48330
8276.4(c).....	47815	8280.3(g)(1).....	48340
8276.4(d).....	47820	8280.3(g)(2).....	48335
8276.4(e).....	47825	8280.3(h)	48345
8276.4(f)	47830(a)	8280.3(i)	48350
8276.4(g).....	47010(a)	8280.3(j)	48360
8276.4(h).....	47010(b), 47835	8280.4(a)	47905
8276.5(a) 1st sent	47610	8280.4(b)	47945
8276.5(a) 2nd sent	47615	8280.5(a)-(e).....	47940
8276.5(a)(1), (2).....	47620	8280.5(f).....	47945
8276.5(a)(3)	47625	8280.6(a)	47910
8276.5(a)(4)	47630	8280.6(b)	48355
8276.5(a)(5)	47635	8280.6(c)	48305, 48360
8276.5(a)(6)	47640	8280.6(d)	47945
8276.5(a)(7)	47645	8280.7	48510
8276.5(a)(8)	not cont'd	8280.9	48505
8276.5(b).....	47650	8281	47015
8276.5(c).....	47830(b)	8282	48650
8276.5(d).....	47655	8283	47455
8276.5(e), (f)	47660	8284(a) 1st sent	47450(a)
8276.5(g).....	47605	8284(a) 2nd sent	47460(a)
8276.5(h).....	47600	8284(b), (c)	48660
8276.5(i).....	47665	8340	46400
8277	47305	8341	46410
8278	47070	8342	46425
8279	47055	8343	46415
8279.1(a)-(e)	47155	8344	50255
8279.1(f)	47160	8345	50405
8280	48500	8346	46420
8280.1(a).....	47900	8370	39005, 41495, 43355

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8371(a), (b)	39010	8429 1st sent	51475
8371(c), (d)	41455	8429 2nd sent	51480
8372	39105	8429.5	51485
8373	39555	8429.7	51490
8374	44455(a), 44470	8430	44105(a)
8375	44455(b)	8431	44200(a), (b)
8376	44450	8432	44200(c)
8377	44460(b)	8433	15150(b), 44105(b), 44200(d)
8377.5	44460(a)	8434	15150(a)
8378	44465	8435	39410
8380	39100	8436	20105(a)
8381	39655	8436.5	20105(b)
8382	38755(b), 44755(b)	8437	20100(a)
8383.5	39050	8437.1	20100(b)
8384	38755(c), 44755(c)	8460	500
8385	21950	8460 1st para	22100(a)
8386	38755(a), 44755(a)	8460 2nd para	22105, 22115
8387	44760	8460 3rd para	22100(b)
8388(a)	42805	8460 4th para	14200(c), 21920(b), 22200(c)
8388(b)	42800	8461	22110
8388(c)	42810(a)	8462	22120
8388(d)	42810(b)	8463	22125
8388.5	42905	8475	46405
8389(a) 1st sent	40500	8490	49005
8389(a) 2nd sent	40505	8491	49015
8389(b)	40510(a)	8492	49020
8389(c)	40510(b)	8494(a)	39950
8389(d)	40515	8494(b)	39955(a)
8391	39900	8494(c)	39955(b)
8392	39905	8494(d)	39960
8393(a)	40755	8494(e)	39965
8393(b)	40760	8494(f)	39970
8394	43655(a)	8494(g)	39980
8394.5	43655(b)	8494(h)	39975
8395	43555	8495(a)	40100
8398	15100	8495(b)-(d)	40105
8399	51400	8495(e)	40110
8399.1	51405	8496	40115
8400	15105	8497	40120
8403(a)	38360	8500	45010
8403(b) 1st sent	19510(a)	8510	49205
8403(b) 2nd sent	19510(b)	8550 1st para, 1st sent	40350(a)
8403(c)	19505	8550 1st para, 2nd sent; 2nd para	40355
8405	50505	8550.5	40360
8405.1	50510	8552(a) 1st sent	40350(b)
8405.2	50515	8552(a) 2nd sent	40375, 40380
8405.3	50520	8552(b)-(e)	40365
8405.4	50525	8552.1	40400
8411	40610, 40620	8552.2	40380
8412	40605	8552.3	40385
8420	51450	8552.4	40395
8424	51455	8552.5	40445
8425(a)	51460	8552.6	40375
8425(b)	51465	8552.7	40390
8428	51470	8552.8	40370

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
8553	40455	8598.3(b)	20735
8554	40405	8598.4	20740
8555	40410	8598.6	20745
8556	40415	8599	42950
8557	40420	8599.3	42955
8558	40425	8599.4	42850
8558.1(a) 1st, 2nd sent	40430	8601	685, 690
8558.1(a) 3rd sent	40435(c)	8601.5(a)	15600(a), 18900(c)
8558.1(b)	not cont'd	8601.5(b) 1st, 2nd sent	15600(b)
8558.2	40435(a), (b)	8601.5(b) 3rd sent	15610(b)
8558.3	40435(d)	8601.5(b) 4th sent	15610(c)
8559	40440	8601.5(c)	15610(a)
8561	18300	8601.6(a)	15605
8561.5	18305	8601.6(b)	not cont'd
8562	18310	8602	15300
8563	18315	8603	14300
8564	18320	8604	14305
8567	18325	8605	1735
8568	18330	8606	19900
8568.5	18335	8606.1	16100
8569	18340	8607	38355
8573	18345	8608	15305
8574	18350	8609	16805
8575	18355	8610.1	16850
8575.5	18360	8610.2	16855
8576	18365	8610.3	16860
8576.5	18370	8610.4	16865
8577	18375	8610.5	16870
8579	18380	8610.6	16875
8580	18385	8610.9	16880
8581	18390	8610.11	16885
8582	18395	8610.12	16890
8585	22600	8610.13	16895
8585.5	22605	8610.14	16900
8586	22610	8610.15	16905
8586.1	22625	8610.16	16910
8587	22630	8614	19905
8587.1	22620	8615	19910
8589	22615	8623(a), (b), (e)	38760, 39055, 44765
8589.5	22640	8623(c), (d)	18500
8589.7	22635	8625	18505
8590	50955	8626	18510
8591	51005	8630 1st para	15400(a)
8593	51000	8630 1st para, 2nd sent	19405(b)
8594	51050	8630 2nd para 1st-3rd sent	15420, 19425
8595(a)	51015(b)	8630 2nd para 4th, 5th sent	15425(b), 19430(b)
8595(b)	51015(d)		
8595(a)	51100(a)	8631	15400(b)-(d)
8596	20700	8632	15405, 19410
8597(a)	510, 20705	8633	15410, 19415
8597(b)	20710	8634	15425(a), 19430(a)
8597(c)	20715	8635	15415, 19420
8598	20720	8660	15500
8598.2	20725	8661	15505
8598.3(a), (c)	20730	8663	15515

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
8664	15520	8803	16025
8664.5	17000	8804	16030
8664.67	17005	8805	16035, 16040
8664.7	17010	8806	16045
8664.8	17015	8807	16050
8664.13	17020	8830 1st sent	765
8665	15510	8830 2nd sent	16105(a)
8666	17025	8831	16150
8667	15525	8832	16350, 16650
8668	15530	8833	16250, 16280, 16285, 16290, 16295, 16300, 16305
8669	15535	8834	47000
8670	15540(a)	8834.1	41490
8680	18000	8834.5	47065
8681	18005	8835	16255, 16260, 16265
8681.5	18010	8836	16270, 16275, 16310
8681.7	18015	8837	16155
8682	18020	8840	16175
8683	18025	8841(a)-(c)	16110(a)-(c)
8684	18030	8841(d)	16105(b)
8685	18035	8841(e)	16110(d)
8685.5	18040	8841(f)	16160(a)
8685.6	18045	8841(g)	51010(a), (b)
8685.7	18050	8841(h)	16165(a)
8686	18055	8841(i)	16110(g), 16160(b), 16165(b), 16170(b), 51010(c)
8687	18060	8841(j), (k)	16010(e), (f)
8688	18065	8841(l)	16170(a)
8691	18070	8842(a) 1st para	51100(a)
8692	18075	8842(a) 2nd para	51100(b)
8692.5	18080	8842(b)	51105(a)
8693	18085	8842(c) 1st sent	51110
8694	18090	8842(c) 2nd sent	40125
8696	18095	8842(c) 3rd sent	51115
8700	18100	8842(d)	51105(b)
8720	18200	8843	16355
8721	18205	8870	16400
8724	18210	8870(a)	16450, 16455, 16460, 16465, 16470
8725	18215	8870(b)	16475
8750	675	8870(c)	16480
8751	15700, 15705, 15710	8890	16550, 16555
8752	15715, 15720, 15725, 15730, 15735, 15740	9000(a), (b)	19200
8754	15745, 15750, 15755, 15760(a)-(c)	9000(c)	19600
8755	15775(a), 15775(b), 15780, 15785	9000.5(a)	255
8756	39000, 41485, 42505, 44205	9000.5(b)	330
8757	15760(d), 15765(a), 15765(b), 15770(a), 15770(b), 15775(c)	9000.5(c)	470
8780(a) 1st sent	235	9000.5(d)	490
8780(a) 2nd sent	15760(e), 15765(c), 15770(c), 15775(d), 15905	9000.5(e)	560
8780(b)	15910	9000.5(f)	630
8780(c), (d)	15915	9001	19205
8780.1	15900	9001.6	39755
8800	240	9001.7(a)-(j)	19500
8801	16000, 16005, 16010	9001.7(k)	49610
8802	16015, 16020	9001.8	40905
		9002(a)	19300(a)

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
9002(b).....	19305	9100	15000
9002(c).....	19300(b)	9101	15005
9002(d).....	19310	10000	43250
9002.5	19315	10001 1st sent.....	43255
9003	19210	10001 2nd sent	43260
9004	19215, 19220	10002	43265
9005	19225	10003	43270(a)
9006	19230	10004	43270(b)
9007	19400	10005	43275
9008	19405(a), 19405(b), 19410, 19415, 19420, 19425, 19430(a), 19430(b)	10501	34450
9010(a).....	49700	10680	4900
9010(b).....	49710(b)	10681	4905
9010(c)-(e)	49705	10682	4910
9011(a)(1)	47450(a)	10683	4915
9011(a)(2)	47450(b)	10684	4920
9011(a)(3)	47460(b)	10685	4925
9011(b).....	48655	10930	34060
9011(c).....	47465	10931	34065
9012(a).....	47005	11000	2500
9012(b).....	47450(c)	11001	2505(a)
9015(a).....	51015(a)	11002	2510
9015(b).....	51015(c)	11003	2515
9020(a).....	19605	11004	2520
9020(b).....	19610	11005	2525
9022(a).....	19515	11006	2530
9022(b).....	19510(a)	11007	2535
9023	39305	11008	2540
9024	49010	11009	2545
9025.1	18700	11010	2550
9025.5(a).....	18950, 19000, 19005, 19010(a), 19015(a), 19030, 19035, 19040, 19045, 19050	11011	2555
9025.5(b).....	770	11012	2560
9025.5(c).....	19010(b), 19015(b), 19020, 19025	11013	2565
9026	18900(a), (b)	11014	2570
9027	18800(c), 18805(c), 18810(c)	11015	2575
9027.5	18815(c), 18815(d), 18820(c), 18820(d), 18825(c), 18825(d)	11016	2580
9028	18705	11017	2585
9029	18800(a), 18800(b), 18805(a), 18805(b), 18810(a), 18810(b), 18815(a), 18815(b), 18820(a), 18820(b), 18825(a), 18825(b)	11018	2590
9029.5 1st, 3rd sent.....	18805(d), 18810(d)	11019	2595
9029.5 2nd sent	685, 780	11020	2600
9050	19805	11022	2605
9051	19810	11024	2610
9052	19800	11025	2615
9053	45305, 45405	11026	2620
9054 1st sent	50705(a)	11027	2625
9054 2nd sent	50710	11028	2630
9054 3rd sent.....	50705(c)	11029	2635
9054 4th sent	50705(d)	11030	2640
9055	50705(b)	11031	2645
		11032	2650
		11033	2655
		11034	2660
		11035	2665
		11036 1st-3rd para.....	2670
		11037	2675
		11038	2680

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
11039	2685	12013(a), (b), (d)-(g)	8105
12000(a)	4400(a)	12013(c), (g)	8110
12000(b)(1)	8130(c)	12013.3	31105, 33050, 34700, 35100, 35955
12000(b)(2)	not cont'd	12013.5	33470
12000(b)(3)	45700(d)	12014	3105
12000(b)(4)-(12)	4410	12017(a)(1)	8450(g)
12001	10110(d)	12020	4420
12001.5	9500(b), 30505(b), 33205(b), 33465, 34200(b)	12021	4425
12002(a)	4400(b)	12023	25500
12002(b)(1)	3360(c), 11020(c)	12024	25505
12002(b)(3)	34055(d), 45700(d)	12025(a)	4705
12002(b)(5)	15540(b)	12025(b)	4710
12002(b)(7)	8400(c)	12025(c)	4715(a)
12002(c)	28905(b), 29850(b), 29855(b), 30110(b)	12025(d)	4715(b), 4720
12002(d)	4415	12025(e), (f)	4725
12002.1	9900	12025(g)	4715(c)
12002.2	13300	12025(h)	4700
12002.2.1	12905(d)-(f), 12910(d)-(f), 13305	12026	25510
12002.3(a)	13310, 45860	12028	4310
12002.3(b)	45860	12150	10110(a)-(c)
12002.3(c)	13310	12150.5	10115
12002.4	21945	12150.6	10130
12002.6	14950	12150.7	10135
12002.7 1st, 2nd para	21940	12150.8	10140
12002.7 3rd para	535	12151	10120
12002.8(a)-(c)	45865	12151.5	10105
12002.8(d), (e)	38565, 40050, 40450, 41500, 42270, 48800	12152	10125
12002.8(f)	535	12153	14660
12002.9	20240	12154	8505
12002.10	45860	12155	9910
12002.11	10830(e)	12155.5	8515
12003	15540(c)	12156	11240
12003.1	8400(a), (b)	12156.5	9010
12003.2	32500(d), 32700(c)	12157	8630
12003.5	16895	12157.5	8635
12004	18250	12158	8500
12005	33460	12158.5	3100
12005.5	8140(b), 11110(b)	12159	8600
12006(a)(1)	43150(c)	12159.5	30205(d), 32700(d), 38200(f), 52200(f), 53000(f)
12006(a)(2)	49500(f)	12160	8615
12006(b) 1st, 3rd sent	43150(d)-(f), 49500(g)-(i)	12161	8620
12006(b) 2nd sent	43150(e), 49500(h)	12162	8605
12006.6	45855	12163	8625
12008(b)	30205(c)	12164	9905
12008(c)	32700(c)	12165	9005
12008(d)	52200(e), 53000(e)	12166	8510
12008(e)	38200(e)	13000	3500(a)
12008.5	35950	13001(a)	3600
12009	45850	13001(b)	3810
12010	30110(b)	13001.5	3505
12012	8100	13002	3605
		13003	3610
		13005	9105

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
13006	3755	15202	23800(b)
13007(a) 1st sent.....	12000	15300	23900
13007(a) 2nd sent, (b)-(g).....	12005	15301(a)	23910
13100	3900	15301(b)	23905(a)
13101	3905	15301(c)	23905(b)
13102	3910	15400(a)	24000
13103	3915	15400(b) 1st sent	24005
13104	3920	15400(b) 2nd sent	24010
13200	3510	15400(c)	24015
13201	3515	15400(d)	24020
13202	3520	15401	24100(c)
13203	3525	15402	24310
13205	31935	15403 1st para, 1st sent	24100(a)
13220	3750	15403 1st para, 2nd sent	24100(b)
14000	5900	15403 2nd para	24305
14001	5905	15404	24105
14002	5910	15405	24200
14100	5950	15406	24210
14101	5955	15406.5(a) 1st sent	24115(a)
14102	5960	15406.5(a) 2nd sent	24220(a)
14103	5965	15406.5(a) 3rd sent.....	24115(b)
14104	5970	15406.5(b)	24115(c)
14105	5975	15406.7	24220(b)-(d)
15000(a)	23305	15407	24300
15000(b)-(d).....	23350	15408	24320(a)
15001	23915	15409	24320(b)-(e)
15002	24900	15410	24205
15003	23820	15411	24315
15004(a), (b)	23505	15412	24325
15004(c)	23500	15413	24400
15005	23355	15414	24215
15006	23300	15415	24110
15007(a) 1st sent.....	24960(a)	15500	24500
15007(a) 2nd sent	24960(b)	15501	24505
15007(a) 3rd sent	24950(a)	15502	24510
15007(b).....	24950(b)	15503	24515(a)
15007(c).....	24960(c)	15504	24515(b)
15007(d).....	24965	15505	24520
15007(e).....	24970	15506	24525
15007(f)	24955	15507	24530
15008	23360	15508	24535
15100	23365	15509	24545
15101(a)	23605(a)	15510	24540
15101(b) 1st sent.....	23605(b), 23610, 23700	15512	24600
15101(b) 2nd, 4th sent	23700	15513	24605
15101(b) 3rd sent	23600	15514	24610
15101(c)	23605(c)	15516	24615
15101(d).....	23700	15600(a)	24705
15102	23805	15600(b)	24710
15103	23705	15601	24715
15104	23710	15604	24720
15105	23715	15605	24700
15200 1st sent	23800(a)	15700	24800
15200 2nd sent	23815	15701(a)	24805
15201	23810	15701(b)	24810

<i>Existing Provision</i>	<i>Proposed Provision(s)</i>	<i>Existing Provision</i>	<i>Proposed Provision(s)</i>
15702	24820		
15703	24815		
